THE FINANCIAL SUPERVISORY AUTHORITY

REGULATION NO.12/ 2014

R E G U L A T I O N
on the Interoperability Arrangements Concluded by Central Counterparties

In accordance with the provisions of Art. 1 Para (2), Art. 2 Para (1) Letters a) and d), Art. 3 Para (1) Letter b), Art. 6 Para (2) and Art. 14 of Government Emergency Ordinance No. 93/2012 on the establishment, organization and operation of the Financial Supervisory Authority, as subsequently amended and supplemented, approved by Law No. 113/2013, as subsequently amended and supplemented,

Having regard to the provisions of Art. 16 Para (3) of Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC,

In accordance with "the guidelines and recommendations with a view to establishing consistent, efficient and effective assessments of interoperability arrangements" issued by the European Securities and Markets Authority, 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,

In accordance with the deliberations of the Financial Supervisory Authority's Board of 14 July 2014,

The Financial Supervisory Authority issues this regulation.

CHAPTER I

General Provisions

Art. 1. – This regulation establishes rules on the interoperability arrangements concluded by 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*, and in compliance with the European rules issued for its application.

Art. 2. – This regulation applies to the central counterparties authorized by the Financial Supervisory Authority, hereinafter referred to as *FSA,* in accordance with Regulation No. 3/2013 on the authorization 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 Resolution No. 28/2013 of the Financial Supervisory Authority's Board, as subsequently amended and supplemented, upon the conclusion of an interoperability arrangement.

Art. 3. – Upon the assessment of an interoperability proposal based on the provisions of Art. 54 of Regulation (EU) No. 648/2012, FSA shall analyse such request according to the criteria established by this regulation, considering the requirements imposed on the central counterparties concluding an interoperability arrangement, as provided under Art. 51, 52 and 53 of Regulation (EU) No. 648/2012.

Art. 4. – 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 application.

CHAPTER II

Requirements for the Interoperability Arrangement

SECTION 1
Legal Risk

Art. 5. – The interoperability arrangement shall be clearly defined, transparent, valid and applicable in all relevant jurisdictions. The central counterparty shall establish an assessment framework for these factors prior to concluding an interoperability arrangement, and at regular intervals.

Art. 6. – In order for FSA to obtain the prior approval for the interoperability arrangement, to observe the conditions provided under Art. 5, the documentation of the central counterparty shall meet at least the following requirements:

a) to clearly identify, in a contractual form, the rights and obligations of the central counterparties, in accordance with the interoperability arrangement;
b) to be compatible with the central counterparty's risk mitigation procedures;
c) to establish a procedure regarding the periodical assessment of the documentation, ensuring its adequacy and defining the responsibilities of the central counterparties within such procedure;

d) to establish a procedure for the consultation of the risk committee and of the clearing members if the conclusion or amendment of the interoperability arrangement could have a significant impact on the risks to which the central counterparty is exposed, and for the information of the clearing members when the conclusion or amendment of the interoperability arrangement could have an impact on the operations;
e) to clearly identify the procedure and the persons in charge of monitoring and ensuring the operation of the interoperability arrangement;
f) to clearly define the settlement mechanism of the disputes arising from the interoperability arrangement;
g) to clearly define the conditions and procedures of termination of the interoperability arrangement.

SECTION 2

Open and Fair Access

Art. 7. - (1) In order for FSA to obtain the prior approval for the interoperability arrangement, in addition to the requirements provided under Art. 6, the central counterparty shall ensure that the documentation regulating the interoperability arrangement also meets the following conditions:
a) does not contain any clause limiting or hindering the conclusion or extension, in the future, of interoperability arrangements with other central counterparties, except for serious reasons of risk;
b) does not unnecessarily limit the termination of the interoperability arrangement when one of the interoperable central counterparties deems that termination is necessary for serious reasons of risk.
(2) in the cases provided under Para (1) Letter b), the central counterparty deciding to terminate the interoperability arrangement shall submit to FSA a proper justification of the reasons to terminate the arrangement and shall inform with as much time in advance as possible, the clearing members, the trading platforms that the central counterparty serves and other interoperable central counterparties, as applicable.

SECTION 3

Risk Identification, Monitoring and Management

Art. 8. – The central counterparty shall establish a general framework to identify, monitor and manage, prior to concluding an interoperability arrangement and at regular intervals, the potential risks arising from the interoperability arrangement.
Art. 9. – The interoperability arrangement shall not influence the compliance of the central counterparties participating in the arrangement with requirements applicable to them, in accordance with Regulation (EU) No. 648/2012 and the technical standards or equivalent regulations of third countries. In this respect, the requirements shall be met by each central counterparty independently, especially with regard to the pre-financed financial resources, including margins.
Art. 10. – To allow each central counterparty to carry out effective periodical assessments and to identify, monitor and mitigate any new or aggravated risk, any interdependency or any domino effect that may arise from the interoperability arrangement, the central counterparties shall exchange the necessary information regarding their operations, including, as applicable, on the potential resort to third parties for the supply of essential services.
Art. 11. – The central counterparties concluding an interoperability arrangement have the obligation to prepare their own regulations ensuring the fulfilment of the provisions of Regulation (EU) No. 648/2012 and of the provisions hereof, which shall include at least the following:
a) a periodic re-examination procedure of the central counterparties' risk management framework, further to the assessment mentioned under Art. 10;
b) a procedure for mutual approval, among the interoperable central counterparties, of any amendments of the interoperability arrangement, and to settle any disputes;
c) a procedure to inform interoperable central counterparties on any amendment of the rules of a central counterparty;
d) a procedure for the common consent of the central counterparties on any amendments of the rules of a central counterparty, that have a direct impact on the interoperability arrangement;
e) policies, procedures and systems to identify, monitor, assess and mitigate the risks arising from the collective arrangements, and from the rights and obligations of various interoperable central counterparties, in the case of interoperability arrangements involving 3 or more central counterparties;
f) default management procedures, designed to ensure that the management of default by a clearing member of central counterparties does not affect the operations of interoperable central counterparties and does not expose them to additional risks;
g) a procedure regarding the termination of the interoperability arrangement by any of the interoperable central counterparties, conceived in a clear and transparent manner and ensuring the orderly termination of the arrangement, without the unjustified exposure of interoperable central counterparties to additional risks.
Art. 12. – In the case of concluding an interoperability arrangement, the central counterparty shall assess the need of specific procedures for the management of the risks of un-fulfilment of the payment obligations.
Art. 13. – The operational measures, the processing capacity and the risk management measures available to central counterparties shall be sufficiently adaptable and reliable both for the current and projected maximum volumes of activity carried out within the

interoperability relationship, and for the number of central counterparties participating in the interoperability arrangement.
Art. 14. – The information agreements concluded between the interoperable central counterparties shall ensure prompt, reliable and safe communication.
Art. 15. – The financial risks arising from the interoperability arrangement, including the risks related to custody, shall be identified, monitored and mitigated to the same extent as the exposures to which the central counterparty is subject due to its clearing members.
Art. 16. – The central counterparty shall have in place adequate risk models, processes and procedures, including stress tests methodologies to properly estimate its financial exposures and the necessary of liquidity determined by the interoperability arrangement.
Art. 17. – The central counterparty shall assess, collect or have access to the resources required further to the interoperability of the central counterparties, necessary to cover the credit and liquidity risks arising from the interoperability arrangement, including in extreme, but plausible, market conditions.
Art. 18. – The central counterparty shall identify any risks that may appear in the interval between the margin calls of the interoperable central counterparties and the availability of the relevant guarantee.
Art. 19. – The interoperable central counterparties cannot contribute to one another's default funds or to other financial resources, as defined under Art. 43 of Regulation (EU) No. 648/2012.
Art. 20. - (1) The central counterparty shall have in place a procedure for the periodical analysis of the differences between the risk management frameworks, if any, of the interoperable central counterparties, for the identification of any risk that may result from the use of these different models or controls, including the assessment of the results of the stress tests and the testing of the procedures applicable in case of default and, also, the fact that the central counterparty has taken measures to reduce such risks.
(2) Further to the assessment mentioned under Para (1) a process is required whereby the interoperable central counterparties may re-examine their risk management frameworks and analyse the possible measures, including the need for a greater convergence of the risk management frameworks.
Art. 21. – The central counterparty shall assess the risk profile of each interoperable central counterparty, including any risks that may arise from its adhesion policies. The central counterparty shall ensure that the interoperability arrangement does not make the general risk management framework of the central counterparty more vulnerable.
Art. 22. – The central counterparty shall elaborate policies, procedures and systems to periodically monitor and assess, and to mitigate any risk arising from, the interdependencies, including entities or groups of entities acting as clearing members or essential services suppliers for one or several central counterparties. In this respect, it is necessary that the concentration limits established by each central counterparty are re-examined, to verify that they are still adequate, considering the interoperability arrangement, particularly if the arrangement generates higher interdependence risks.
Art. 23. – The central counterparty shall identify the modality in which it shall cover its exposures resulting from the interoperability arrangement, including:

a) how it shall calculate the margin, in compliance with Art. 41 of Regulation (EU) No. 648/2012 and with Chapter VI 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 with regard to regulatory technical standards on requirements for central counterparties, hereinafter referred to as *Delegated Regulation (EU) No 153/2013;*
b) how it shall withstand the exposures, further to the default of an interoperable central counterparty, without reducing the central counterparty's capacity to fulfil its obligations to its own clearing members;
c) the premises related to establishing and exchanging margins among the central counterparties, which have to include presenting to FSA a detailed explanation of the differences, if any, between the risk management parameters applied for the exposures between the central counterparties and the parameters applied to the clearing members.

Art. 24. – To prevent causing vulnerabilities to the general risk management framework of the central counterparty resulting from the interoperability arrangement, the central counterparty shall implement risk management instruments, such as margin policies and default funds.
Art. 25. – The central counterparty shall establish arrangements that are transparent for its clearing members to withstand the exposures arising from the interoperability arrangement, including in extreme, but plausible, market conditions.
Art. 26. – The interoperable central counterparty has the obligation to establish default deposits to protect itself in case of default by any other interoperable central counterparty.

SECTION 4

Other Requirements

Art. 27. – In order to verify the compliance with the provisions of Art. 5, FSA shall consider at least whether:

a) the central counterparty verified that the clearing agreements between the interoperable central counterparties are valid and enforceable;
b) the central counterparty verified that its rules and procedures regarding the moment of entry of transfer orders into its systems and the moment of irrevocability time were defined in accordance with the provisions of Art. 52 Para (1) of Regulation (EU) No. 648/2012;
c) the central counterparty properly assessed the likeliness of occurrence of cross-border legal issues, further to its participation in the interoperability arrangement, particularly with respect to the applicable procedures and the enforceability of the guarantee

contracts;

d) the central counterparty verified that its management procedures regarding the default of interoperable central counterparties are valid and enforceable;

e) the central counterparty has in place enforceable rules that apply to the interoperable central counterparty, and viable interoperability procedures.

Art. 28. – In order to verify the compliance with the provisions of Art. 8, FSA shall also consider the following:

a) the potential exposures of the central counterparty, arising from the uncovered losses from credits, if the order of use of the resources of central counterparty in case of default was exhausted;

b) the extent to which the portability of the positions from a defaulting central counterparty to a non-defaulting central counterparty or to a default fund of the interoperable central counterparty, dedicated to covering the exposures resulting from the financial instruments compensated through the interoperability arrangement, shall contribute to mitigating the exposure of the interoperable central counterparties;

c) ensuring that the risks introduced by the interoperability arrangement are disclosed to the clearing members, in accordance with Art. 38 Para (2) of Regulation (EU) No. 648/2012 and Art. 10 of Delegated Regulation (EU) No 153/2013;

d) the risks of the collective interoperability arrangement, if more than two central counterparties participate in an interoperability arrangement;

e) the probable necessary liquidity resulting from the interoperability arrangement, as in the case where a margin call between central counterparties is not fulfilled.

Art. 29. – In order to verify the compliance by the central counterparty of the provisions of Art. 26, FSA shall analyse whether the central counterparty deposits the received guarantees so as to be protected in case of default of an interoperable central counterparty.

CHAPTER III

Final Provisions

Art. 30. – If the interoperability arrangement is concluded between a central counterparty authorised under Art. 17 of Regulation (EU) No. 648/2012 and a central counterparty recognised under Art. 25 of Regulation (EU) No. 648/2012, a cooperation arrangement must be in place between FSA and the competent authority in the third country.

Art. 31. – This regulation shall be published in the Official Journal of Romania, Part I, in the Financial Supervisory Authority's Bulletin, and on its website and shall enter into force upon its publication in the Official Journal of Romania, Part I.

President of the Financial Supervisory Authority,
Mișu Negrițoiu

Bucharest, 16 July 2014.
No. 12.