

## AMENDMENTS TO EURONEXT CLEARING'S REGULATIONS

### REGULATION (EU) 2021/23 – INTRODUCTION OF A SECOND SKIN IN THE GAME

Cassa Compensazione & Garanzia (CC&G, also Euronext Clearing) as a leading European Central Counterparty (CCP) is continuously committed in ensuring the pursue of the highest risk management standards, in compliance with applicable requirements concerning the provision of its clearing service.

In this context, in December 2020 Regulation (EU) 2021/23 (hereinafter, “**CCPRR**”) has been adopted by European co-legislators, introducing an innovative framework concerning recovery and resolution of European central counterparties. The overarching objectives underpinning this set of rules are to ensure: (i) that CCPs set out comprehensive measures and arrangements to recover from financial distress (recovery arrangements); as well as (ii) that appropriate arrangements are in place for guaranteeing the maintenance of the critical functions of a CCP, that has been deemed failing or likely to fail, while preserving financial stability and avoiding adverse externalities on the financial system (resolution arrangements).

Concerning recovery arrangements, amongst others, CCPRR mandates CCPs to adopt and implement within their rules an additional layer of prefunded own resources, i.e. a **second skin in the game (“SSITG”)**. Similarly to the layer of prefunded own resources already foreseen under Article 45 of Regulation (EU) 648/2012<sup>1</sup>, this newly introduced SSITG is intended to become inherent part of the CCP’s waterfall, acting as a further incentive measures for the CCP towards adherence to the highest risk management standard.

From a loss allocation perspective, pursuant to article 9, paragraphs 14 and 15 of CCPRR, said additional layer of prefunded own resources of the CCP, shall be used to cover losses following: (i) a default of a clearing member event, after the exhaustion of the default waterfall’s prefunded resources, and prior to the use of the recovery tools foreseen in the CCP’s rulebook; (ii) a non-default event, prior to the use of applicable non-default losses recovery tools

In order to ensure proportionality, CCPs shall calculate the precise amount of SSITG, according to a specific calculation methodology, developed by ESMA in consultation with the public and embedded in relevant Level 2 regulatory standards<sup>2</sup>. In developing said methodology, ESMA implemented the general criteria provided for within the Level 1 text.<sup>3</sup>

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<sup>1</sup> As implemented by Article 35 of Delegated Regulation (EU) 153/2013.

<sup>2</sup> Pursuant to article 9, (15) of CCPRR, ESMA shall submit to the Commission, for endorsement, draft Regulatory technical Standards concerning a methodology for calculation and maintenance of the additional amount of pre-funded dedicated own resources (Article 9(15)) In this context, following extensive public consultation, ESMA published on the 31th of January 2022, a Final Report RTS containing said methodology. On 25 November 2022 the European Commission adopted the mentioned RTS under the form of a Commission Delegated Regulation supplementing CCPRRR with regard to regulatory technical standards specifying the methodology for calculation and maintenance of the SSITG to be used in accordance with Article 9(14), which is currently subject to a three months scrutiny period by the Council and European Parliament before its publication in the EU Official Journal. In quantifying the amount of the SSITG, Euronext Clearing, in agreement with NCAs, has made reference to the Commission Delegated Regulation endorsed by the Commission..

<sup>3</sup> In particular, pursuant to CCPRR article 9 (15), ESMA’s methodology shall be developed considering the following criteria:(i) the structure and internal organisation of CCPs, as well as the nature, scope and complexity of their activities; (ii) the structure of incentives of the CCP’s shareholders, the CCP’s management, the clearing members and the clients; (iii) the appropriateness for CCPs to invest the SSITG amount in alternative assets other than those allowed under Article 47(1) of EMIR; (iv) the rules and practices of third-country CCPs, to ensure that the SSITG requirement does not impair the competitiveness of EU CCPs.

From a timeline perspective, pursuant to Article 97 of CCPRR, the above described requirement shall be applied by CCPs starting from the 12<sup>th</sup> of February 2023.

Euronext Clearing has assessed the quantification of its SSITG against the indicators foreseen in the under Annex 1 of the Delegated Regulation adopted on 25 November 2022 by the Commission supplementing CCPRRR with regard to regulatory technical standards specifying the methodology for calculation and maintenance of the SSITG to be used in accordance with Article 9(14) of that Regulation.

. The concrete quantification of the additional layer of prefunded own resources to be included by Euronext Clearing, will be published on its internet website.

Concerning Article B.6.2.3. of the Regulations, it should be pointed out that the default waterfall of Euronext Clearing already includes a layer of prefunded own resources of the CCP, i.e. a voluntary second skin in the game, to be used in case of default losses exceeding the surviving participants' resources, and before the use of Euronext Clearing's assessment's power and other loss allocation tools specified within the rules. Article B.6.2.3. is therefore amended, in order to reflect the introduction of the SSITG, which will substitute the voluntary contribution currently foreseen within paragraph 1, letter e) of Article B.6.2.3. Therefore, in case of a participant's default, the new SSITG shall be used after the exhaustion of the defaulting and the surviving participants prefunded resources, and before the call for additional resources on surviving members (i.e. before the use of additional resources and assessment rights mentioned within Article B.6.2.3., paragraph 1 letter f) and following).

Lastly, the opportunity is taken to streamline the provision set out under Article B.6.2.3 letter c) concerning the first skin in the game also in relation to Euronext Clearing's new website address.

The amendments below will become effective starting from the **12<sup>th</sup> of February 2023**.

## REGULATIONS

### Article A.1.1.1 Definitions

1 The following definitions shall apply to these *Regulations*:

*Omissis*

**"CCPRR Regulation": Regulation (EU) No. 23/2021 of the European Parliament and of the Council of 16 December 2020, as amended and supplemented.**

*Omissis*

## PART B.6 Default

*Omissis*

### Chapter B.6.2 Default procedure

*Omissis*

#### **Article B.6.2.3. Costs for management of default procedures of a *Clearing Member***

1. Subject to subsequent recovery actions against the party in default, where the default procedure indicated at Article B.6.2.1 is triggered, CC&G shall allocate the losses and costs in the following order:
  - a) to the *Margins* and payments to the *Default Funds* (including the replacement guarantees indicated at Article A.1.1.5, paragraph 4), deposited by the *Member* in default and those arising from the closing of the *Contractual Positions*;
  - b) to the guarantee, if deposited by the defaulting *Member*, indicated at Article B.2.1.2, paragraph 5;
  - c) to the assets of CC&G within the limits **of the amount calculated** established ~~with a specific *Notice in compliance with*~~ pursuant to article 35 of the Regulation no. 153/2013 of the European Commission, implementing article 45 of the *EMIR Regulation* **and published on its internet website: [www.euronext.com/it/posttrade/euronextclearing](http://www.euronext.com/it/posttrade/euronextclearing)**);
  - d) to the contributions to the *Default fund* of the other *Clearing Members* of the *Section* concerned, pro rata to the payments made and limited to the losses and costs incurred in relation exclusively to the *Contractual Positions* of the *Section*;
  - e) ~~CC&G own resources, up to the amount published on CC&G's Internet site ([www.ccg.it](http://www.ccg.it))~~ **to the assets of CC&G, within the limits of the amount calculated in compliance with article 9, paragraph 14 and 15 of *CCPRR Regulation* and related Commission Delegated Regulation and published on its internet**

website: [www.euronext.com/it/posttrade/euronextclearing](http://www.euronext.com/it/posttrade/euronextclearing));

- f) to the additional resources paid by the *Clearing Members* pursuant to Article B.4.2.5 pro rata to their contribution to the *Default Fund* of the *Section* concerned.

Any remaining losses following the actions set out under the preceding points will be allocated by *CC&G* pro rata to the *Clearing Members* to the *Section* concerned up to a maximum amount equal to 50% of the payment of the additional resources pursuant to Article B.4.2.5.

2. In the event of default of a *Clearing Member*:

- a) the assets held in the "omnibus client" and "segregated client" accounts, and in the "net omnibus segregated client" and "gross omnibus segregated client" account pursuant to Article B.3.1.2 shall not be used to close the "house" account and any existing sub-accounts;
- b) the assets held in the "house" account shall be used, where necessary, for the closure of the *Contractual Positions* registered in the "omnibus client" and "segregated client" accounts and in the "net omnibus segregated client" account and in the "gross omnibus segregated client" account pursuant to Article B.3.1.2 and any existing sub-accounts;

3. At the end of the procedures indicated in this Article, any balances of the defaulting *Clearing Member* in excess of the amount necessary to cover any losses sustained shall be returned by *CC&G* to the *Clearing Member* itself, with indication of the assets of each "omnibus client" account, "net omnibus segregated client" account and "gross omnibus segregated client" account and each sub-account related to each "gross omnibus segregated client" account pursuant to Article B.3.1.2, paragraph 3 or to each *Member Pro-tem*, where in managing the default procedure *CC&G* did not succeed in transferring the relevant positions and assets.