

Chapter 1

Commission Delegated Regulation (EU) 2016/2251

Article 2 General requirements

(1) Counterparties shall establish, apply and document risk management procedures for the exchange of collateral for non-centrally cleared OTC derivative contracts.

(2) The risk management procedures referred to in paragraph 1 shall include procedures providing for or specifying the following:

For the purposes of point (g) of the first subparagraph, the terms of the agreements shall comprise all aspects concerning the obligations arising from any non-centrally cleared OTC derivative contract to be concluded, and at least the following:

(a) the eligibility of collateral for non-centrally cleared OTC derivative contracts in accordance with Section 2;

(b) the calculation and collection of margins for non-centrally cleared OTC derivative contracts in accordance with Section 3;

(c) the management and segregation of collateral for non-centrally cleared OTC derivative contracts in accordance with Section 5;

(d) the calculation of the adjusted value of collateral in accordance with Section 6;

(e) the exchange of information between counterparties and the authorisation and recording of any exceptions to the risk management procedures referred to in paragraph 1;

(f) the reporting of the exceptions set out in Chapter II to senior management;

(g) the terms of all necessary agreements to be entered into by counterparties, at the latest, at the moment in which a non-centrally cleared OTC derivative contract is concluded, including the terms of the netting agreement and the terms of the exchange of collateral agreement in accordance with Article 3;

(h) the periodic verification of the liquidity of the collateral to be exchanged;

(i) the timely re-appropriation of the collateral in the event of default by the posting counterparty from the collecting counterparty; and

(j) the regular monitoring of the exposures arising from OTC derivative contracts that are intragroup transactions and the timely settlement of the obligations resulting from those contracts.

For the purposes of point (g) of the first subparagraph, the terms of the agreements shall comprise all aspects concerning the obligations arising from any non-centrally cleared OTC derivative contract to be concluded, and at least the following:

(a) any payment obligations arising between counterparties;

(b) the conditions for netting payment obligations;

(c) events of default or other termination events of the non-centrally cleared OTC derivative contracts;

(d) all calculation methods used in relation to payment obligations;

(e) the conditions for netting payment obligations upon termination;

(f) the transfer of rights and obligations upon termination;

(g) the governing law of the transactions of the non-centrally cleared OTC derivative contracts.

(3) Where counterparties enter into a netting or an exchange of collateral agreement, they shall perform an independent legal review of the enforceability of those agreements. That review may be conducted by an internal independent unit or by an independent third party. The requirement to perform the review referred to in the first subparagraph shall be considered to be satisfied in relation to the netting agreement where that agreement is recognised in accordance with Article 296 of Regulation (EU) No 575/2013.

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(4) Counterparties shall establish policies to assess on a continuous basis the enforceability of the netting and the exchange of collateral agreements that they enter into.

(5) The risk management procedures referred to in paragraph 1 shall be tested, reviewed and updated as necessary and at least annually.

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(6) Upon request, counterparties using initial margin models in accordance with Section 4 shall provide the competent authorities with any documentation relating to the risk management procedures referred to in paragraph 2(b) at any time.