

EMIR: CCPs and Trade Repositories

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C L I F F O R D
C H A N C E



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This document is not intended to be comprehensive or to provide legal advice. For more information speak to your usual Clifford Chance contact or one of the lawyers named below.

Introduction

The market infrastructure to support EU derivatives reforms is quickly taking shape.

- 2014 saw the first authorisations of EU central counterparties (CCPs). The first authorisation took place on 18 March 2014, triggering the commencement of the first clearing obligation procedure under Article 5(2) of the EU regulation on OTC derivatives, central counterparties and trade repositories (EMIR). The first regulatory technical standards (RTS) imposing a clearing obligation could be published in the Official Journal and enter into force as early as November 2015.
- The EMIR reporting regime, in force since 12 February 2014, is supported by a number of EU trade repositories (TR) which are registered with, and directly supervised by, the European Securities and Markets Authority (ESMA).
- ESMA maintains the following registers:
 - a public list of authorised CCPs;
 - a public register of the classes of OTC derivatives that CCPs have been authorised to clear; and
 - a public list of registered trade repositories.
- These can be accessed on ESMA's website: <http://www.esma.europa.eu/page/Registries-and-Databases>

Progress has been slower for non-EU CCPs and TRs.

- On 31 October 2014, the European Commission (Commission) adopted equivalence determinations for the regulatory regimes of CCPs in Australia, Hong Kong, Japan and Singapore. The Commission is understood to be working on assessments for twelve additional jurisdictions, including the US. Finalising these assessments is stated to be a top priority for the Commission.
- On 27 April 2015, ESMA recognised 10 non-EU CCPs from Australia, Hong Kong, Japan and Singapore. Recognition by ESMA permits these CCPs to provide clearing services to clearing members or trading venues established in the EU.
- ESMA maintains the following registers:
 - a public list of recognised CCPs (<http://www.esma.europa.eu/page/Registries-and-Databases>); and
 - a non-exhaustive list of non-EU CCPs which have applied for recognition under Article 25 of EMIR (<http://www.esma.europa.eu/page/Central-Counterparties>).
- There is no indication as to when the Commission expects to make equivalence determinations under Article 13 of EMIR.
- Whilst EMIR also contains a recognition regime for TRs established outside the EU, the preconditions to recognition (including the need for equivalence determinations and international agreements between the EU and the relevant non-EU jurisdictions) have meant that, in practice, no progress on this front has yet been made.

The following charts illustrate the current status of CCPs and TRs in the EU.



EU CCPs authorised under EMIR

CCP	Date of authorisation	MiFID financial instruments											Other
		OTC derivatives									ETD	Securities	
		Equity	Debt	Interest rate	Inflation rate	Credit	Currencies	Commodities	Emission / climatic	Freight			
Nasdaq OMX Clearing AB	18 March 2014	✓	✓	✓	✗	✗	✓	✓	✓	✗	✓	✗	✗
European Central Counterparty N.V.	1 April 2014	✗	✗	✗	✗	✗	✗	✗	✗	✗	✗	✓	✗
KDPW_CCP	8 April 2014	✗	✗	✓	✗	✗	✗	✗	✗	✗	✓	✓	✓
Eurex Clearing AG	10 April 2014	✗	✓	✓	✓	✗	✗	✗	✗	✗	✓	✓	✓
CCG	20 May 2014	✗	✗	✗	✗	✗	✗	✗	✗	✗	✓	✓	✓
LCH.Clearnet SA	22 May 2014	✗	✗	✗	✗	✓	✗	✗	✗	✗	✓	✓	✓
European Commodity Clearing	11 June 2014	✗	✗	✗	✗	✗	✗	✓	✓	✓	✓	✗	✓
LCH.Clearnet Ltd	12 June 2014	✓	✓	✓	✓	✗	✓	✓	✓	✓	✓	✓	✓
Keler CCP	4 July 2014	✗	✗	✗	✗	✗	✗	✗	✗	✗	✓	✓	✓
CME Clearing Europe Ltd	4 Aug 2014	✗	✗	✓	✗	✗	✗	✓	✗	✓	✓	✗	✓
CCP.A	14 Aug 2014	✗	✗	✗	✗	✗	✗	✗	✗	✗	✗	✓	✗
LME Clear Ltd	3 Sept 2014	✗	✗	✗	✗	✗	✗	✓	✗	✗	✓	✗	✗
BME Clearing	16 Sept 2014	✗	✗	✓	✗	✗	✗	✗	✗	✗	✓	✓	✓
OMIClear	31 Oct 2014	✗	✗	✗	✗	✗	✗	✓	✗	✗	✓	✗	✗
ICE Clear Netherlands B.V.	12 Dec 2014	✓	✗	✗	✗	✗	✗	✗	✗	✗	✗	✗	✗
Athens Exchange Clearing House	22 Jan 2015	✗	✗	✗	✗	✗	✗	✗	✗	✗	✓	✓	✓

Source: ESMA list of authorised CCPs dated 5 August 2015

Trade repositories registered under EMIR

The trade repositories listed below have been registered by ESMA in accordance with EMIR.

The first registrations took effect on 14 November 2013, with the reporting obligation beginning on 12 February 2014, i.e. 90 working days after the official registration date.

Trade Repository	Derivative asset class	Effective date
DTCC Derivatives Repository Ltd. (DDRL)	All asset classes	14 November 2013
Krajowy Depozyt Papierów Wartościowych S.A. (KDPW)	All asset classes	14 November 2013
Regis-TR S.A.	All asset classes	14 November 2013
UnaVista Limited	All asset classes	14 November 2013
CME Trade Repository Ltd. (CME TR)	All asset classes	5 December 2013
ICE Trade Vault Europe Ltd. (ICE TVEL)	Commodities, credit, equities, interest rates	5 December 2013

Source: ESMA list of registered trade repositories dated 28 November 2013

Non-EU CCPs recognised under EMIR

Third country	CCP	Date of recognition	MiFID financial instruments											Other	
			OTC derivatives*									ETD	Securities		
			Equity	Debt	Interest rate	Inflation rate	Credit	Currencies	Commodities	Emission / climatic	Freight				
Australia	ASX Clear (Futures) Pty Ltd.	27 April 2015	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✗	✓	✓
	ASX Clear Pty Ltd.	27 April 2015	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✗	✓	✗
Hong Kong	Hong Kong Securities Clearing Company Ltd.	27 April 2015	✗	✗	✗	✗	✗	✗	✗	✗	✗	✗	✗	✓	✗
	HKFE Clearing Corporation Limited	27 April 2015	✓	✓	✓	✗	✗	✓	✓	✗	✗	✗	✗	✗	✗
	OTC Clearing Hong Kong Limited	27 April 2015	✗	✗	✓	✗	✗	✓	✗	✗	✗	✗	✗	✗	✗
	The SEHK Options Clearing House Limited	27 April 2015	✓	✗	✗	✗	✗	✗	✗	✗	✗	✗	✗	✗	✗
Japan	Japan Securities Clearing Corporation	27 April 2015	✓	✓	✓	✗	✓	✓	✗	✗	✗	✗	✓	✓	
	Tokyo Financial Exchange, Inc.	27 April 2015	✓	✗	✓	✗	✗	✓	✗	✗	✗	✗	✗	✗	
Singapore	The Central Depository (Pte) Limited	27 April 2015	✗	✗	✗	✗	✗	✗	✗	✗	✗	✗	✓	✗	
	Singapore Exchange Derivatives Clearing Limited	27 April 2015	✓	✓	✓	✗	✗	✓	✓	✗	✓	✗	✗	✗	

Source: ESMA list of recognised third-country CCPs dated 7 May 2015

* Includes: (i) OTC bilateral contracts (contracts which are not executed on a regulated market (RM) or an equivalent non-EU market); and (ii) OTC non-EU exchange contracts (contracts which are executed on a non-EU exchange which is not considered as equivalent to a RM). The purple shaded cells indicate CCPs which only clear OTC non-EU exchange contracts. The blue shaded cells indicate CCPs which only clear OTC bilateral contracts. A tick in an un-shaded cell indicates CCPs which clear both OTC bilateral contracts and OTC non-EU exchange contracts.

Non-EU CCPs awaiting recognition

The following non-EU CCPs have applied to ESMA for, and are still awaiting, recognition under Article 25 of EMIR to provide services in the EU and have agreed for their name to be published.

This list is not necessarily exhaustive and it remains subject to further updates by ESMA.



Third country	CCPs applying for recognition
Argentina	<ul style="list-style-type: none"> Argentina Clearing S.A.
Brazil	<ul style="list-style-type: none"> BM&FBOVESPA S.A.
Canada	<ul style="list-style-type: none"> Canadian Derivatives Clearing Corporation ICE Clear Canada Inc. Natural Gas Exchange Inc.
Dubai	<ul style="list-style-type: none"> Dubai Commodities Clearing Corporation DMCC NASDAQ Dubai Limited
India	<ul style="list-style-type: none"> Indian Clearing Corporation Limited MCX-SX Clearing Corporation Ltd. National Securities Clearing Corporation Limited The Clearing Corporation of India Ltd.
Israel	<ul style="list-style-type: none"> MAOF Clearing House Limited Tel-Aviv Stock Exchange Clearing House Limited
Japan†	<ul style="list-style-type: none"> Japan Commodity Clearing House Co.

Third country	CCPs applying for recognition
Korea	<ul style="list-style-type: none"> Korea Exchange Inc. Korea Securities Depository
Malaysia	<ul style="list-style-type: none"> Bursa Malaysia Derivatives Clearing Berhad (BMDC)
Mexico	<ul style="list-style-type: none"> Asigna Compensacion y Liquidacion
New Zealand	<ul style="list-style-type: none"> New Zealand Clearing and Depository Ltd.
Singapore†	<ul style="list-style-type: none"> Ice Clear Singapore
South Africa	<ul style="list-style-type: none"> JSE Clear (Pty) Ltd (previously the Safex Clearing Company (Pty) Ltd)
Switzerland	<ul style="list-style-type: none"> SIX x-clear Ltd.
Taiwan	<ul style="list-style-type: none"> Taiwan Futures Exchange Corporation
US	<ul style="list-style-type: none"> Chicago Mercantile Exchange Inc Fixed Income Clearing Corporation ICE Clear Credit LLC ICE Clear U.S. Inc. LCH.Clearnet LLC Minneapolis Grain Exchange Inc. National Securities Clearing Corporation The Options Clearing Corporation

† On 31 October 2014, the Commission adopted equivalence determinations for the regulatory regimes of CCPs in Japan and Singapore (as well as Australia and Hong Kong). The Commission continues to work on assessing twelve additional jurisdictions, including the US.

Source: ESMA list dated 23 February 2015 which can be accessed here: <http://www.esma.europa.eu/page/Central-Counterparties>

Annex 1: proposed classes of OTC derivatives subject to the clearing obligation

“G4 currencies” IRS classes (RTS adopted by Commission, awaiting scrutiny by Parliament/Council)

Type	Reference Index	Settlement Currency	Maturity	Settlement Currency Type	Optionality	Notional Type*	Authorised CCPs**					
							Eurex	LCH Ltd	Nasdaq	KDPW	CME	BME
Basis	Euribor	EUR	28D-50Y	Single currency	No	Constant or Variable	✓	✓	✗	✗	✓	✓
	Libor	GBP	28D-50Y	Single currency	No	Constant or Variable	✓	✓	✗	✗	✓	✗
	Libor	JPY	28D-30Y	Single currency	No	Constant or Variable	✓	✓	✗	✗	✓	✗
	Libor	USD	28D-50Y	Single currency	No	Constant or Variable	✓	✓	✗	✗	✓	✗
Fixed-to-float	Euribor	EUR	28D-50Y	Single currency	No	Constant or Variable	✓	✓	✓	✗	✓	✓
	Libor	GBP	28D-50Y	Single currency	No	Constant or Variable	✓	✓	✗	✗	✓	✗
	Libor	JPY	28D-30Y	Single currency	No	Constant or Variable	✓	✓	✗	✗	✓	✗
	Libor	USD	28D-50Y	Single currency	No	Constant or Variable	✓	✓	✗	✗	✓	✗
FRA	Euribor	EUR	3D-3Y	Single currency	No	Constant or Variable	✓	✓	✓	✗	✓	✓
	Libor	GBP	3D-3Y	Single currency	No	Constant or Variable	✓	✓	✗	✗	✓	✗
	Libor	USD	3D-3Y	Single currency	No	Constant or Variable	✓	✓	✗	✗	✓	✗
OIS	EONIA	EUR	7D-3Y	Single currency	No	Constant or Variable	✓	✓	✓	✗	✓	✓
	FedFunds	USD	7D-3Y	Single currency	No	Constant or Variable	✓	✓	✗	✗	✓	✗
	SONIA	GBP	7D-3Y	Single currency	No	Constant or Variable	✓	✓	✗	✗	✓	✗

CDS classes (awaiting final draft RTS from ESMA)

Type	Sub-Type	Geographical Zone	Reference Index	Settlement Currency	Series	Maturity	Authorised CCPs**	
							LCH SA	ICE Clear†
Index CDS	Untranched Index	Europe	iTraxx Europe Main	EUR	11 onwards	5Y	✓	✓
	Untranched Index	Europe	iTraxx Europe Crossover	EUR	11 onwards	5Y	✓	✓

* Recital 2 of the adopted RTS indicates that contracts with conditional notional amounts will not be subject to the clearing obligation. In particular, the recital acknowledges that a distinction exists between variable notionals (notionals which vary over the life of the contract in a predictable way) and conditional notionals (notionals which vary over the life of the contract in an unpredictable way).

** ESMA has not provided a detailed list (comparable to the public register for EU authorised CCPs) of the classes of OTC derivatives cleared by each of the recognised non-EU CCPs.

† ESMA expects that ICE Clear Europe will be authorised before the entry into force of the RTS on CDS.

Annex 1: proposed classes of OTC derivatives subject to the clearing obligation (continued)

“EEA currencies” IRS classes (awaiting final draft RTS from ESMA)

Type	Reference Index	Settlement Currency	Maturity	Settlement Currency Type	Optionality	Notional Type*	Authorised CCPs**				
							Eurex†	LCH Ltd	Nasdaq	KDPW	CME
Fixed-to-float	PRIBOR	CZK	28D-5Y	Single currency	No	Constant or Variable	✗	✓	✗	✗	✓
	CIBOR	DKK	28D-5Y	Single currency	No	Constant or Variable	✗	✓	✓	✗	✓
	BUBOR	HUF	28D-5Y	Single currency	No	Constant or Variable	✗	✓	✗	✗	✓
	NIBOR	NOK	28D-5Y	Single currency	No	Constant or Variable	✗	✓	✓	✗	✓
	WIBOR	PLN	28D-5Y	Single currency	No	Constant or Variable	✗	✓	✗	✓	✓
	STIBOR	SEK	28D-15Y	Single currency	No	Constant or Variable	✗	✓	✓	✗	✓
FRA	NIBOR	NOK	3D-1Y	Single currency	No	Constant or Variable	✗	✓	✓	✗	✗
	WIBOR	PLN	3D-1Y	Single currency	No	Constant or Variable	✗	✓	✗	✓	✗
	STIBOR	SEK	3D-2Y	Single currency	No	Constant or Variable	✗	✓	✓	✗	✗

* Recital 2 of the draft RTS indicates that contracts with conditional notional amounts will not be subject to the clearing obligation. In particular, the recital acknowledges that a distinction exists between variable notionals (notionals which vary over the life of the contract in a predictable way) and conditional notionals (notionals which vary over the life of the contract in an unpredictable way).

** ESMA has not provided a detailed list (comparable to the public register for EU authorised CCPs) of the classes of OTC derivatives cleared by each of the recognised non-EU CCPs.

† At the time of publication of Consultation Paper No.4, Eurex did not clear the proposed classes. However, Eurex has indicated an intention to offer clearing of some of the proposed classes in the future.

Annex 1: proposed classes of OTC derivatives subject to the clearing obligation (continued)

ESMA has determined not to impose a clearing obligation on the following classes of FX NDFs (at this time):

Type	Currency Pair	Settlement Currency	Settlement Type	Maturity	Authorised CCPs	
					LCH Ltd	Nasdaq
NDF	BRL / USD	USD	Cash settlement	3D-2Y	✓	✓
	CLP / USD	USD	Cash settlement	3D-2Y	✓	✓
	CNY / USD	USD	Cash settlement	3D-2Y	✓	✓
	COP / USD	USD	Cash settlement	3D-2Y	✓	✓
	IDR / USD	USD	Cash settlement	3D-2Y	✓	✓
	INR / USD	USD	Cash settlement	3D-2Y	✓	✓
	KRW / USD	USD	Cash settlement	3D-2Y	✓	✓
	MYR / USD	USD	Cash settlement	3D-2Y	✓	✓
	PHP / USD	USD	Cash settlement	3D-2Y	✓	✓
	RUB / USD	USD	Cash settlement	3D-2Y	✓	✓
TWD / USD	USD	Cash settlement	3D-2Y	✓	✓	

Materials on the Clearing Obligation:

- Discussion Paper on the Clearing Obligation Under EMIR - 12 July 2013
- Consultation Paper on the Clearing Obligation Under EMIR No.1 (IRS) - 11 July 2014
- Consultation Paper on the Clearing Obligation Under EMIR No.2 (CDS) - 11 July 2014
- Final Report – Draft Technical Standards on the Clearing Obligation (IRS) - 1 October 2014
- Consultation Paper on the Clearing Obligation under EMIR No.3 (FX NFD) - 1 October 2014
- Letter from the Commission to ESMA proposing amendments to the RTS on IRS – 18 December 2014
- ESMA Opinion on Draft RTS on the Clearing Obligation on IRS – 29 January 2015
- Feedback Statement on the Clearing Obligation for FX NDFs – 4 February 2015
- Consultation Paper on the Clearing Obligation under EMIR No.4 (IRS) – 11 May 2015
- Commission adopted RTS on the Clearing Obligation for IRS (G4 currencies) – 6 August 2015

These can be accessed on ESMA's website here: <http://www.esma.europa.eu/page/OTC-derivatives-and-clearing-obligation>

- **CCP:** central counterparty
- **CDS:** credit OTC derivatives
- **Clearing obligation:** requirement to clear at a CCP all OTC derivative contracts pertaining to a class of OTC derivatives that has been declared subject to the clearing obligation in accordance with the procedure in Art.5(2) EMIR
- **Commission:** the European Commission
- **Derivative:** as defined in EMIR, i.e. a financial instrument as set out in points (4) to (10) Section C, Annex 1, MiFID, as implemented by the MiFID implementing regulation
- **EMIR:** the EU regulation on OTC derivatives, central counterparties and trade repositories
- **ESA:** European Supervisory Authority (i.e. EBA, EIOPA or ESMA)
- **ESMA:** European Securities and Markets Authority
- **ETD:** exchange traded derivatives, i.e. derivatives executed on a regulated market or equivalent non-EU market
- **EU:** European Union
- **EEA:** European Economic Area
- **FX NDF:** foreign exchange non-deliverable forwards
- **IRS:** interest-rate OTC derivatives
- **MiFID:** the EU markets in financial instruments directive
- **OTC derivative:** over-the-counter derivative as defined in EMIR, i.e. a derivative executed outside a regulated market or equivalent non-EU market
- **TR:** trade repository

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