

FINANCIAL INSTITUTIONS ADVISORY &amp; FINANCIAL REGULATORY | 17 March 2016

## Update on Third Country Equivalence Under EMIR

The European Commission has adopted an “equivalence” decision on the derivatives regulatory regimes for derivatives clearing organisations in the United States. This follows the decisions adopted in November 2015 for Canada, Mexico, the Republic of Korea, South Africa and Switzerland and in October 2014 for Australia, Hong Kong, Japan and Singapore. Further decisions are awaited for other jurisdictions and for other derivatives regulatory requirements. This paper summarises the equivalence decisions and technical advice that has been produced to date.

### Introduction

Under the European Market Infrastructure Regulation (“EMIR”),<sup>1</sup> the European Commission may adopt implementing acts declaring that the legal, supervisory and enforcement arrangements of a non-EU country are equivalent to the requirements in EMIR.<sup>2</sup> Such a decision is necessary for a central counterparty (“CCP”) or trade repository (“TR”) established in a non-EU country to provide their services in the EU. EMIR also requires equivalence decisions to be issued in respect of other obligations. These are relevant in circumstances where one of the counterparties to a trade subject to EMIR is established outside the EU, as an equivalence decision would permit both counterparties to comply with the non-EU country’s equivalent regime instead.

Under EMIR the European Commission may request the European Securities and Markets Authority (“ESMA”) to provide technical advice as to the equivalence of some non-EU jurisdictions which host major derivatives markets or CCPs which have applied for recognition. ESMA’s assessment is a factual comparison of the rules in the relevant jurisdiction with the EU rules and advice to the Commission on how any differences might affect an equivalence decision or could be incorporated into an equivalence decision. The scope of the advice covers the recognition of non-EU CCPs and TRs, the clearing obligation, reporting obligation, non-financial counterparties (“NFCs”), portfolio reconciliation, dispute resolution, portfolio compression and margin requirements.

The Commission’s equivalence decision will be based on ESMA’s advice and an assessment of the outcomes of the third country’s rules, including whether the rules mitigate any risks faced by market participants in the EU to the same extent that the EMIR rules are intended to do so. The trading volumes in a jurisdiction can be relevant to an assessment of the risks posed to clearing members of a third country CCP. Those CCPs with

<sup>1</sup> Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories.

<sup>2</sup> You may like to read our client note, “Extraterritoriality Revisited: Access to the European Markets by Financial Institutions, Funds and Others from Outside Europe,” available [here](#). The note sets out the requirements for non-EU entities to gain access to the EU markets under various European legislative requirements.

larger trading volumes operating in larger financial markets will need to be subject to more rigorous risk mitigation requirements than those operating in smaller financial markets.<sup>3</sup>

## US Equivalence

On 10 February 2016, the European Commission and the Commodity Futures Trading Commission (“CFTC”) announced a common approach on the supervision of CCPs operating in the US and EU (the “Common Approach”).<sup>4</sup> The agreement was necessary because key differences between the EU and US regimes had been preventing the Commission from adopting an equivalence decision for the US. Notably, the crucial discrepancy on minimum liquidation periods<sup>5</sup> has been resolved - the EU liquidation period for exchange-traded futures contracts must be at least two business days whereas in the US it is one day and for customer positions, EU rules provide that clearing members may post margin on a net basis whereas the US rules require clearing members to post margin on a gross basis.

The European Commission has now adopted an equivalence decision.<sup>6</sup> The decision mirrors the stipulations set out in the Common Approach. The equivalence decision declares that the legal and supervisory arrangements of the CFTC for derivative clearing organisations (“DCOs”) that have been declared systemically important derivatives clearing organisations (“SIDCOs”) by the Financial Stability Oversight Council or DCOs that have opted into additional standards similar to the SIDCO regime (so-called “Subpart C DCOs”) are equivalent to the EU requirements under EMIR, provided that the DCO’s internal rules and procedures meet the following requirements:

- For derivatives contracts executed on regulated markets, a minimum liquidation period of two days for initial margin is applied to clearing members’ proprietary positions;
- For all derivative contracts, measures are in place to limit procyclicality which are equivalent to the options under EMIR;<sup>7</sup> and
- The DCO has sufficient pre-funded available resources enabling it to withstand the default of at least two clearing members to which it has the largest exposures under extreme conditions.

The equivalence decision provides that these additional conditions will not apply to US agricultural commodity derivatives traded and cleared domestically within the US, in light of the nexus of these contracts with the US

<sup>3</sup> For example, the equivalence decision for South Africa notes that over the past three years, the total value of derivatives cleared in South Africa was less than 1% of the total value of derivatives cleared in the EU.

<sup>4</sup> You may like to see our client note, “EU-US Agreement on Regulation of Central Counterparties,” dated 16 February 2016, available [here](#).

<sup>5</sup> A liquidation period is the time period used for the calculation of the collateral that the CCP estimates is necessary to manage its exposure to a defaulting member. Essentially, a CCP examines the maximum predicted possible price movement over the liquidation period to calculate a baseline figure for initial margin.

<sup>6</sup> The decision was published in the Official Journal of the European Union on 16 March 2016 and is available [here](#).

<sup>7</sup> EMIR provides for the following options: a) applying a margin buffer at least equal to 25 % of the calculated margins which it allows to be temporarily exhausted in periods where calculated margin requirements are rising significantly; (b) assigning at least 25 % weight to stressed observations in the lookback period calculated under EMIR; (c) ensuring that its margin requirements are not lower than those that would be calculated using volatility estimated over a 10 year historical lookback period.

economy, the importance of the contracts to US agricultural providers and the low degree of systemic interconnectedness of agricultural products with the rest of the financial system.

The CFTC is responsible for oversight of derivative contracts other than those based on a single security (a bond or share) or loan or narrow-based index of securities (which are subject to the oversight of the Securities and Exchange Commission (“SEC”)). US CCPs that provide clearing services for those derivatives contracts that fall within the remit of the SEC are not covered by the equivalence decision. If a US CCP provides clearing services for derivatives under the purview of both the CFTC and the SEC, the decision relates only to those services that fall within the CFTC’s jurisdiction.

### **Margin for Customer Positions**

The equivalence decision also states that the US rules on margin for customer positions are equivalent to the EU rules. The Commission has determined that although the details of the US rules differ with those of the EU rules, the outcomes are equivalent. EU rules require margin for customer accounts to be collected on a net basis whereas the US rules require it to be collected on a gross basis. According to the Commission, the difference between the net and gross margin collection results in the same outcomes “which compensates for the difference in the liquidation period.”

ESMA published proposals in December 2015 to amend the liquidation period for customer positions to allow for one day gross margin to be posted provided that certain conditions were met, including that the identity of the client is known to the CCP, the client is not an affiliate of a clearing member and the CCP implements procedures to: (i) calculate for each account, initial and variation margin requirements at least every hour during the day; and (ii) collect margins within one hour where the new margin requirement meets certain thresholds. Considerable industry concern was expressed in response to ESMA’s proposals, including that the conditions are not required under the US rules.

### **Recognition Under EMIR**

SIDCOs and Subpart C DCOs may therefore apply to ESMA for recognition under EMIR but will need to show that their internal rules and procedures meet the requirements set out above to obtain recognition. Following the announcement of the EU-US agreement in February 2016, ESMA announced that it will do everything in its powers to shorten the 180 day period that it has to make a recognition decision for CCPs under EMIR. The impetus for this approach is the incoming clearing obligation for certain IRS entered into with an EU counterparty. As a result, it seems likely that those DCOs that clear IRS may have their applications for recognition prioritized over the applications of other DCOs. Although ESMA has committed to act speedily, the DCOs may also need to implement changes to their rules and procedures to ensure that the additional requirements for recognition are met.

### **US Comparability Determination**

Consistent with the Common Approach, the CFTC adopted, on 16 March 2016, its own substituted compliance determination for DCOs that are also EU CCPs. According to the determination, an EU CCP could comply with the EU requirements on financial resources, risk management, settlement procedures and default procedures instead of the CFTC requirements. Such substituted compliance will be available to EU CCPs that are currently registered as DCOs as well as EU CCPs seeking to become registered as DCOs. The CFTC staff has also clarified that certain CFTC requirements will not apply to non-Futures Commission Merchant clearing members (and their customers) of EU CCPs that are DCOs.

## Equivalence for Other Jurisdictions

Implementing Decisions for Mexico, South Korea, South Africa and Switzerland were published on 14 November 2015, declaring equivalence between the legal and supervisory regimes of those four countries and EMIR for the regulation and supervision of CCPs. An Implementing Decision for Canada for the provinces of Alberta, British Columbia, Manitoba, Ontario and Quebec was also published on 14 November 2015, declaring equivalence between the legal and supervisory regimes of those five provinces and EMIR for the regulation and supervision of CCPs. Implementing Decisions for Australia, Hong Kong, Japan and Singapore were published in October 2014, declaring equivalence between the legal and supervisory framework of the four countries and EMIR for the regulation and supervision of CCPs. In addition, a Memorandum of Understanding was signed with each of the authorities in Australia, Hong Kong, Japan, Mexico, South Africa and Singapore regarding arrangements for cooperation related to ESMA's monitoring of the ongoing compliance by CCPs established in each country with the recognition conditions set out in Article 25 of EMIR. To date, 16 CCPs in Australia, Canada, Hong Kong, Japan, Mexico, South Africa and Singapore have obtained recognition under EMIR.<sup>8</sup>

In September and October 2013, ESMA published its technical advice to the European Commission on the equivalence to the EU rules of the derivatives frameworks in several countries, including the US, Australia, Hong Kong and Japan. In certain cases, where the frameworks were still being finalised, ESMA was unable to advise fully on equivalence. Advice on the regimes for CCPs has also been provided for Hong Kong, Singapore, Switzerland, India and South Korea and on the regimes for TRs for Singapore. Advice relating to Dubai has been postponed.

## EU Clearing Obligation

EMIR provides that ESMA may determine which derivatives should be subject to the mandatory clearing obligation. European legislation has been implemented which will make it mandatory to clear certain OTC interest rate swaps ("IRS") through CCPs. This will represent the first mandatory clearing obligation under EMIR. The obligation applies to fixed-to-float IRS (plain vanilla IRS derivatives), float-to-float swaps (basis swaps), forward rate agreements and overnight index swaps denominated in euro, pounds sterling, Japanese yen or US dollars and entered into with an EU counterparty. The obligation will be phased in according to counterparty type to allow market participants time to determine if the obligation applies to them and set up procedures to ensure compliance. From 21 June 2016, the obligation applies for clearing members for at least one of the relevant classes of IRS of at least one CCP authorized or recognized to clear one of those classes.<sup>9</sup> ESMA consulted during 2015 on extending the clearing obligation for IRS to include fixed-to-float IRS denominated in Czech koruna, Danish krone, Hungarian forint, Norwegian krone, Swedish krona and Polish zloty to forward rate agreements denominated in Norwegian krone, Swedish krona and Polish zloty.<sup>10</sup> It has not yet published any final draft technical standards to take those proposals forward.

<sup>8</sup> The 16 CCPs are ASX Clear (Futures) Pty Ltd, ASX Clear Pty Ltd, HKFE Clearing Corporation Limited, Hong Kong Securities Clearing Company Limited, OTC Clearing Hong Kong Limited, SEHK Options Clearing House Limited, Japan Securities Clearing Corporation, Tokyo Financial Exchange Inc, Singapore Exchange Derivatives Clearing Limited, JSE Clear, ICE Clear Canada, Canadian Derivatives Clearing Corporation, Asigna Compensacion y Liquidacion, The Central Depository (Pte) Limited and ICE Clear Singapore.

<sup>9</sup> You may like to view our client note, "EU Clearing Obligation for Interest Rate Swaps Loans" dated 24 August 2015, available [here](#).

<sup>10</sup> The consultation paper is available [here](#).

On 1 March 2016, the European Commission announced that it had adopted a Delegated Regulation on the clearing obligation for credit derivatives. The Delegated Regulation, which does not substantively change the final ESMA regulatory technical standards, provides for untranched iTraxx Index CDS (Main, EUR,5Y) and untranched iTraxx Index CDS (Crossover, EUR,5Y) derivatives to be subject to the clearing obligation. The exact dates for when the clearing obligation will come into effect will be determined by the date of publication of the Delegated Regulation in the Official Journal of the European Union.

The transitional exemption period for pension funds to comply with the EU clearing obligation was extended from 16 August 2015 to 16 August 2017 in September 2015. ESMA has published a list of pension scheme arrangements exempt from the clearing obligation which so far comprises the 16 arrangements granted exemption by the UK's Financial Conduct Authority.

### **Capital Requirements for Exposures to CCPs**

The recognition of a third country CCP is also important for the clearing members of the CCPs. Recognition under EMIR will give the CCP the status of being a qualifying CCP ("QCCP") which is relevant for clearing member firms to calculate their capital requirements for exposures to CCPs under the EU Capital Requirements Regulation ("CRR"). Lower capital requirements are imposed for exposures to a QCCP than for exposures to a non-QCCP CCP. Under the CRR transitional measures, the enhanced capital requirements would have applied for exposures to non-QCCPs from 15 June 2014, albeit that the European Commission has used its powers to extend that deadline three times and may do so again. Although the Commission has adopted an equivalence decision for CCPs established in the US, those CCPs still need to obtain recognition before the revised 15 June 2016 deadline for the lower capital requirements to apply to exposures to those CCPs.

The matrix below provides a status update and summarises the key outcomes of ESMA's technical advice for the jurisdictions on which ESMA has published advice.

**NOTE:**

- For Canada, ESMA concluded, on 1 October 2013, that it was not in a position to perform a conclusive analysis as Canada was still in the process of finalising its regulatory regime. ESMA has not published advice to date. An equivalence decision has been adopted for the supervision of CCPs.
- For Switzerland, ESMA has provided advice for CCPs only. ESMA concluded, on 1 October 2013, that it was not in a position to perform a conclusive analysis as Switzerland was still in the process of finalizing its regulatory regime other than for CCPs.
- For Singapore and Hong Kong, ESMA's advice was only requested for TRs and CCPs.
- For South Korea and India, ESMA's advice was only requested for CCPs.
- For South Africa and Mexico, ESMA has not published advice.

**KEY:**



Clearing obligation, risk mitigation, NFCs, margin for OTC, derivatives, effective supervision, dispute resolution



Trade repository requirements



CCP requirements

	US	JAPAN	AUSTRALIA
<b>Clearing obligation</b>	<p>No equivalence decision yet.</p> <p>ESMA's advice: equivalent, provided that:</p> <p>(i) the product subject to the clearing obligation in the EU is also subject to the clearing obligation in the US; and</p> <p>(ii) the entity in the US is a non-exempted entity, or, if exempted, it would benefit from an equivalent exemption in the EU.</p> <p><u>Intragroup transactions:</u></p> <p>In view of the establishment of an equivalent regime for the clearing obligation and for risk mitigation techniques (see below requirements which are part of the EMIR risk mitigation rules), ESMA advises that transactions between EU and US entities in the same group should benefit from the intragroup exemption.</p>	<p>No equivalence decision yet.</p> <p>ESMA's advice: equivalent, provided that:</p> <p>(i) the product subject to the clearing obligation in the EU is also subject to the clearing obligation in Japan; and</p> <p>(ii) the entity in Japan is a non-exempted entity, or, if exempted, it would benefit from an equivalent exemption in the EU.</p>	<p>No equivalence decision yet.</p> <p>ESMA's advice: equivalent, provided that:</p> <p>(i) the product subject to the clearing obligation in the EU is also subject to the clearing obligation in Australia; and</p> <p>(ii) the entity in Australia is a non-exempted entity, or if exempted, it would benefit from an equivalent exemption if established in the EU.</p>
<b>Timely confirmation</b>	<p>No equivalence decision yet.</p> <p>ESMA's advice: equivalent, provided that:</p> <p>(i) the relevant transaction is executed between a EU counterparty and a Swap Dealer ("SD") or Major Swap Participant ("MSP") subject to Commodity Futures Trading Commission ("CFTC") jurisdiction; and</p> <p>(ii) reporting of unconfirmed trades to EU national regulators is not disapplied.</p>	<p>No equivalence decision yet.</p> <p>ESMA's advice: not equivalent. There are no legally binding requirements for timely confirmation.</p>	<p>No equivalence decision yet.</p> <p>ESMA's advice: not equivalent. There are no legally binding requirements for timely confirmation. However, entities regulated by the Australian Securities and Investments Commission ("ASIC") (e.g. financial services providers) are subject to risk management requirements and have an obligation to conduct financial services honestly, efficiently and fairly. Institutions regulated by the Australian Prudential Regulation Authority ("APRA") are also subject to regulatory guidance. There are also industry conventions about timely confirmation.</p>
<b>Portfolio reconciliation</b>	<p>No equivalence decision yet.</p> <p>ESMA's advice: equivalent, provided that:</p> <p>(i) where the transaction is between a financial counterparty or a NFC that is above the EMIR clearing threshold ("NFC+") and a SD or MSP, the SD or MSP apply the provisions applicable to transactions between SDs and MSPs; and</p> <p>(ii) where the transaction is between a NFC that is below the EMIR clearing threshold ("NFC-") and a SD or MSP, the SD or MSP apply the provisions applicable to transactions to counterparties other than a SD or MSP.</p>	<p>No equivalence decision yet.</p> <p>ESMA's advice: not equivalent. There are no legally binding requirements for portfolio reconciliation.</p>	<p>No equivalence decision yet.</p> <p>ESMA's advice: not equivalent. There are no legally binding requirements for portfolio reconciliation. However, entities regulated by ASIC and/or APRA are subject to risk management requirements, and entities regulated by ASIC have the obligation to conduct financial services honestly, efficiently and fairly. Breaches are enforceable by ASIC and/or APRA, depending on which requirement may not have been complied with, but this is considered insufficient.</p>

	US	JAPAN	AUSTRALIA
<b>Portfolio compression</b>	No equivalence decision yet. ESMA's advice: equivalent where the entity subject to the EMIR provisions on portfolio compression in the EU enters into transactions with a SD or MSP subject to the CFTC regime.	No equivalence decision yet. ESMA's advice: not equivalent. There are no legally binding requirements for portfolio compression.	No equivalence decision yet. ESMA's advice: not equivalent. There are no legally binding requirements for portfolio compression.
<b>Dispute resolution</b>	No equivalence decision yet. ESMA's advice: not equivalent.	No equivalence decision yet. ESMA's advice: not equivalent.	No equivalence decision yet. ESMA's advice: not equivalent.
<b>Effective supervisory and enforcement arrangements with respect to OTC derivatives</b>	No equivalence decision yet. ESMA's advice: broadly equivalent.	No equivalence decision yet. ESMA's advice: equivalent.	No equivalence decision yet. ESMA's advice: equivalent.
<b>Bilateral margin and capital for OTC derivatives</b>	ESMA advises the Commission to suspend a decision on equivalence pending finalisation of the rules in both the EU and each jurisdiction. The Basel Committee on Banking Supervision and the International Organization of Securities Commissions announced on 18 March 2015 that the implementation date for their framework would be postponed until 1 September 2016.		
<b>NFCs</b>	ESMA has advised the Commission not to take a specific determination on equivalence for NFCs but to analyse the clearing obligation and risk mitigation requirements (in the above rows) also with respect to NFCs.		

	JAPAN	AUSTRALIA	HONG KONG
<b>Trade repository requirements</b>	No equivalence decision yet. ESMA's advice postponed (no Japanese TRs have yet indicated that they intend to apply for recognition under EMIR).	No equivalence decision yet. ESMA's advice: <u>Reporting obligation:</u> Broadly equivalent. <u>Guarantee of professional secrecy:</u> Equivalent. <u>Effective ongoing supervision and enforcement:</u> Equivalent.	No equivalence decision yet. Hong Kong is still in the process of finalising its regulatory regime for reporting to TRs. Therefore, ESMA concluded on 1 October 2013 that it was not in a position to perform a conclusive analysis and deliver technical advice on this topic and will wait for a new mandate from the Commission before providing advice. It should be noted that the absence of an assessment on TRs does not prevent the access of Hong Kong CCPs to EU-based TRs authorized by ESMA. Neither does it prevent a Hong Kong branch of a EU entity reporting to a Hong Kong TR if so required by any applicable law other than EMIR.

	US	SINGAPORE	SWITZERLAND
<b>Trade repository requirements</b>	<p>No equivalence decision yet. ESMA's advice:</p> <p><u>Authorisation requirements:</u> Equivalent, provided TRs adopt legally binding internal policies, procedures, rules, models and methodologies which comply with EMIR requirements relating to operational separation and collection of data on exposures (valuation and collateral).</p> <p><u>Reporting obligation:</u> Not equivalent. The reporting obligation of EMIR cannot be substituted with the reporting obligation of the US regime, which omits the requirement to report specific data on valuation of exposures and collateralisation of such exposures. However, where TRs adopt legally binding internal policies, procedures, rules, models and methodologies that ensure the collection of data on exposures (valuation and collateral), these should be taken into account under the recognition assessment.</p> <p><u>Reporting codes:</u> Broadly equivalent. Similar codes are expected to be used by EU and US TRs, also to ensure compliance with the general reconciliation and data aggregation obligations.</p> <p><u>Guarantee of professional secrecy:</u> Equivalent.</p> <p><u>Effective ongoing supervision and enforcement:</u> Equivalent. Although the US regime does not provide specifically for TRs, the US supervisory regime applicable to all regulated firms applies and is equivalent.</p>	<p>No equivalence decision yet. ESMA's advice:</p> <p><u>Authorisation requirements:</u> Equivalent, provided TRs adopt internal policies, procedures and rules that constitute legally binding requirements ensuring the following: (a) operational separation of ancillary services; (b) business continuity, in particular the existence of a second backup site; (c) position calculation by TRs; (d) no duplication of reports: requires TR users to match data and the TR to validate reports upon receipt; (e) deadline to report: TR to be ready to receive reports one day after the execution of the contracts, at the latest; and (f) disclosure to the public and relevant authorities in a similar manner as prescribed under EMIR and relevant technical standards.</p> <p><u>Effective ongoing supervision and enforcement:</u> Equivalent.</p>	<p>No equivalence decision yet. ESMA's advice postponed.</p>

	CANADA <sup>11</sup>	MEXICO	SOUTH KOREA	SOUTH AFRICA	SWITZERLAND
<b>CCPs subject to ongoing supervision and enforcement</b>	Equivalent under Commission Implementing Decision 2015/2040.	Equivalent under Commission Implementing Decision 2015/2041.	Equivalent under Commission Implementing Decision 2015/2038.	Equivalent under Commission Implementing Decision 2015/2039.	Equivalent under Commission Implementing Decision 2015/2042.
<b>Effective system for recognition of CCPs authorised under the legal regime of a third country</b>	Equivalent under Commission Implementing Decision 2015/2040.	Equivalent under Commission Implementing Decision 2015/2041.	Equivalent under Commission Implementing Decision 2015/2038.	Equivalent under Commission Implementing Decision 2015/2039.	Equivalent under Commission Implementing Decision 2015/2042.
<b>CCP authorisation requirements</b>	Equivalent under Commission Implementing Decision 2015/2040.	Equivalent under Commission Implementing Decision 2015/2041.	Equivalent under Commission Implementing Decision 2015/2038.	Equivalent under Commission Implementing Decision 2015/2039.	Equivalent under Commission Implementing Decision 2015/2042.
	JAPAN	AUSTRALIA	HONG KONG	SINGAPORE	
<b>CCPs subject to ongoing supervision and enforcement</b>	Equivalent under Commission Implementing Decision 2014/752/EU.	Equivalent under Commission Implementing Decision 2014/755/EU.	Equivalent under Commission Implementing Decision 2014/754/EU.	Equivalent under Commission Implementing Decision 2014/753/EU.	
<b>Effective system for recognition of CCPs authorised under the legal regime of a third country</b>	Equivalent under Commission Implementing Decision 2014/752/EU.	Equivalent under Commission Implementing Decision 2014/755/EU.	Equivalent under Commission Implementing Decision 2014/754/EU.	Equivalent under Commission Implementing Decision 2014/753/EU.	
<b>CCP authorisation requirements</b>	Equivalent under Commission Implementing Decision 2014/752/EU.	Equivalent under Commission Implementing Decision 2014/755/EU.	Equivalent under Commission Implementing Decision 2014/754/EU. Note that this is limited to entities authorised under the Securities and Futures Ordinance only.	Equivalent under Commission Implementing Decision 2014/753/EU.	

<sup>11</sup> The Implementing Decision for Canada is limited to the provinces of Alberta, British Columbia, Manitoba, Ontario and Quebec.

	US	INDIA
<b>CCPs subject to ongoing supervision and enforcement</b>	Equivalent under Commission Implementing Decision 2016/377 for SIDCOs or opt-in SIDCOs subject to the CFTC's supervision and oversight.	No equivalence decision yet. ESMA's advice: equivalent.
<b>Effective system for recognition of CCPs authorised under the legal regime of a third country</b>	Equivalent under Commission Implementing Decision 2016/377 for SIDCOs or opt-in SIDCOs subject to the CFTC's supervision and oversight.	No equivalence decision yet. ESMA's advice: not equivalent.
<b>CCP authorisation requirements</b>	Equivalent under Commission Implementing Decision 2016/377 for SIDCOs or opt-in SIDCOs subject to the CFTC's supervision and oversight, provided that the CCP's internal rules and procedures meet certain requirements.	No equivalence decision yet. ESMA's advice: equivalent, provided the CCP adopts legally binding internal policies, procedures, rules, models and methodologies which comply with certain requirements for CCPs under EMIR – ESMA identifies the following specific areas of requirements: <ul style="list-style-type: none"> <li>(a) Organisational, including governance, compliance, audit etc.</li> <li>(b) Requirements for senior management and Securities and Exchange SEBI of India;</li> <li>(c) Risk Committee requirements for CCPs under Reserve Bank of India ("RBI") supervision;</li> <li>(d) Record keeping;</li> <li>(e) Requirements for shareholders and members with qualifying holdings for CCPs under RBI supervision;</li> <li>(f) Requirements for the assessment of qualifying holdings for CCPs under RBI supervision;</li> <li>(g) Conflict of interest requirements for CCPs under RBI;</li> <li>(h) Business continuity;</li> <li>(i) Outsourcing;</li> <li>(j) General conduct of business requirements for CCPs under RBI supervision;</li> <li>(k) Participation;</li> <li>(l) Transparency;</li> <li>(m) Segregation and portability;</li> <li>(n) Exposure management requirements for CCPs under RBI supervision;</li> <li>(o) Margin;</li> <li>(p) Default fund;</li> <li>(q) Other financial resources;</li> <li>(r) Liquidity risk control;</li> <li>(s) Default waterfall;</li> <li>(t) Collateral;</li> </ul>

US

INDIA

- (u) Investment policy;
- (v) Default procedure;
- (w) Review of models, stress testing and back testing; and
- (x) Settlement.

The CCP must ensure that no changes are made to its internal policies, procedures, rules or methodologies which would mean that it would no longer comply with the standards required by EMIR.

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This memorandum is intended only as a general discussion of these issues. It should not be regarded as legal advice. We would be pleased to provide additional details or advice about specific situations if desired.

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