

## DERIVATIVES - USA

# Authorities adopt determinations on supervision of CCPs

April 20 2016 | Contributed by [Shearman & Sterling LLP](#)

On March 16 2016 the European Commission published its [equivalence decision](#) on the derivatives regulatory regimes for derivatives clearing organisations in the United States in the *Official Journal of the European Union*. The decision followed the announcement by the Commodity Futures Trading Commission (CFTC) and the European Commission of a common approach on the supervision of central clearing counterparties (CCPs) operating in the United States and the European Union.

The decision provides that the CFTC's legal and supervisory arrangements for derivatives clearing organisations (DCOs) that are systemically important DCOs by the Financial Stability Oversight Council or DCOs that have opted into additional standards similar to the systemically important DCO regime (so-called 'Subpart C DCOs') are equivalent to the EU requirements under the EU Over-the-Counter Derivatives, Central Counterparties and Trade Repositories Regulation (648/2012) (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 derivatives contracts, measures are in place to limit procyclicality which are equivalent to the requirements under EMIR; 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 decision provides that these additional conditions will not apply to US agricultural commodity derivatives traded and cleared domestically within the United States in light of:

- the nexus of these contracts with the US 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 decision does not cover derivatives which are subject to Securities and Exchange Commission oversight (ie, derivatives based on a single security (a bond or share) or loan or narrow-based index of securities).

On the same day, the CFTC adopted a substituted [compliance determination](#) for DCOs that are also EU CCPs under which an EU CCP could comply with the EU requirements on financial resources, risk management, settlement procedures and default procedures instead of the CFTC requirements. This substituted compliance will be available to EU CCPs that are currently registered as DCOs and EU CCPs seeking to become registered as DCOs. The CFTC 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.

For further information on this topic please contact [Donna M Parisi](#), [Geoffrey B Goldman](#) or [Azam H Aziz](#) at Shearman & Sterling LLP by telephone (+1 212 848 4000) or email ([dparisi@shearman.com](mailto:dparisi@shearman.com), [geoffrey.goldman@shearman.com](mailto:geoffrey.goldman@shearman.com) or [aaziz@shearman.com](mailto:aaziz@shearman.com)). The Shearman & Sterling website can be accessed at [www.shearman.com](http://www.shearman.com).

## AUTHORS

[Donna M Parisi](#)



[Geoffrey B Goldman](#)



[Azam H Aziz](#)



The materials contained on this website are for general information purposes only and are subject to the [disclaimer](#).