

# EU requirements on licensing depository and clearing activities on capital markets

mgr Robert Rybski LL.M.

Legal standpoint: 25th of May 2017

Structure

# Structure

- Licensing clearing activities
  - EMIR Regulation:
    - aim of EMIR and measures under EMIR
    - list of CCPs and classes of instruments
    - requirements
  - Procedure under EMIR
  - Requirements under EMIR
  - Recognition of a Third-Country CCP
- Licensing depository activities
  - CSDR Regulation
  - Procedure

# EMIR Regulation. Aims

# EMIR Regulation. Aims

- to reduce the risk and severity of future financial crises;
- to identify and mitigates systemic risks arising from trading in derivatives;
- to decrease credit risk of a counterparty, especially in derivatives

Note: special focus on OTC transactions

# EMIR Regulation. Measures

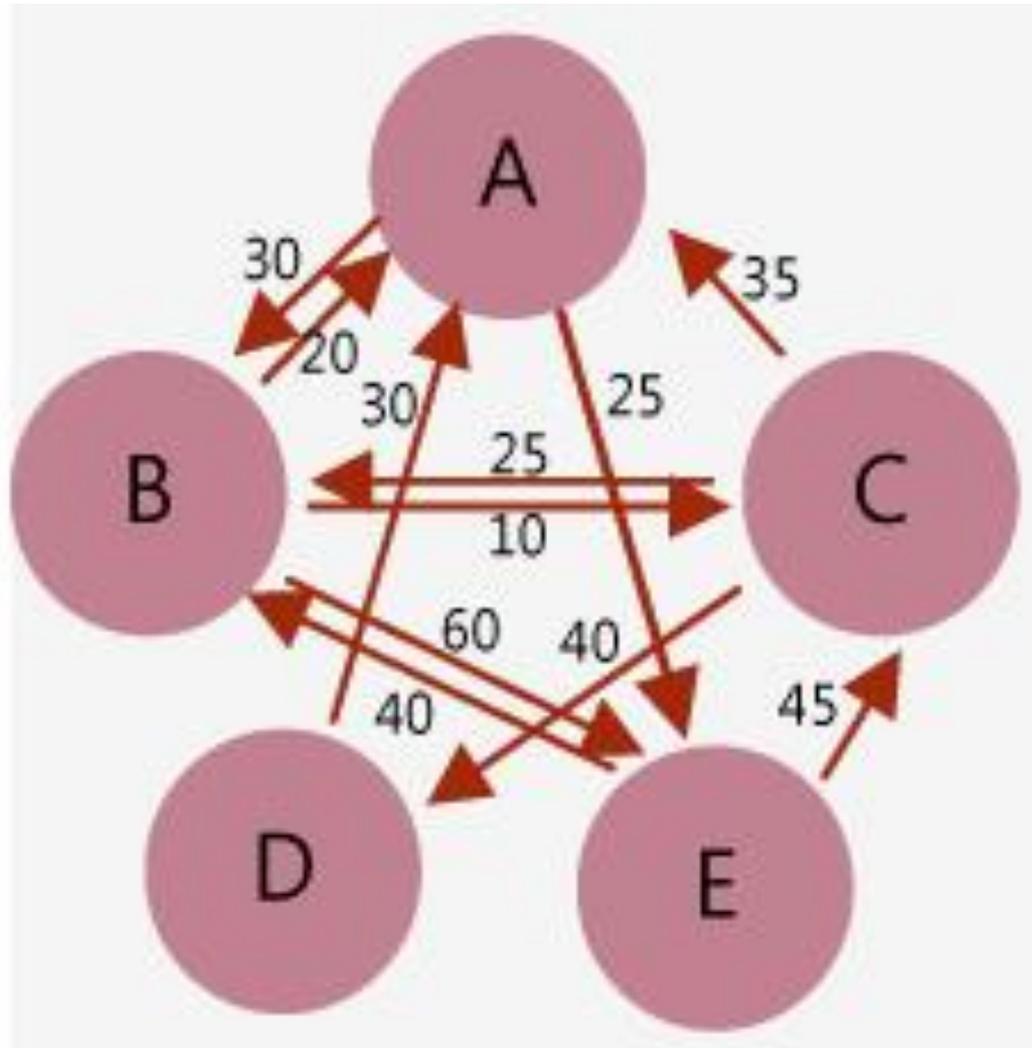
# EMIR Regulation. Measures

- Measure I: central clearing of transactions, especially in derivatives
- Measure II: OTC clearing obligations
- Measure III: exchange of collateral in bilateral transactions
- Measure IV: trading obligation under MIFID II
- Measure V: reporting obligation to TRs supervised by ESMA

Measure I: central clearing

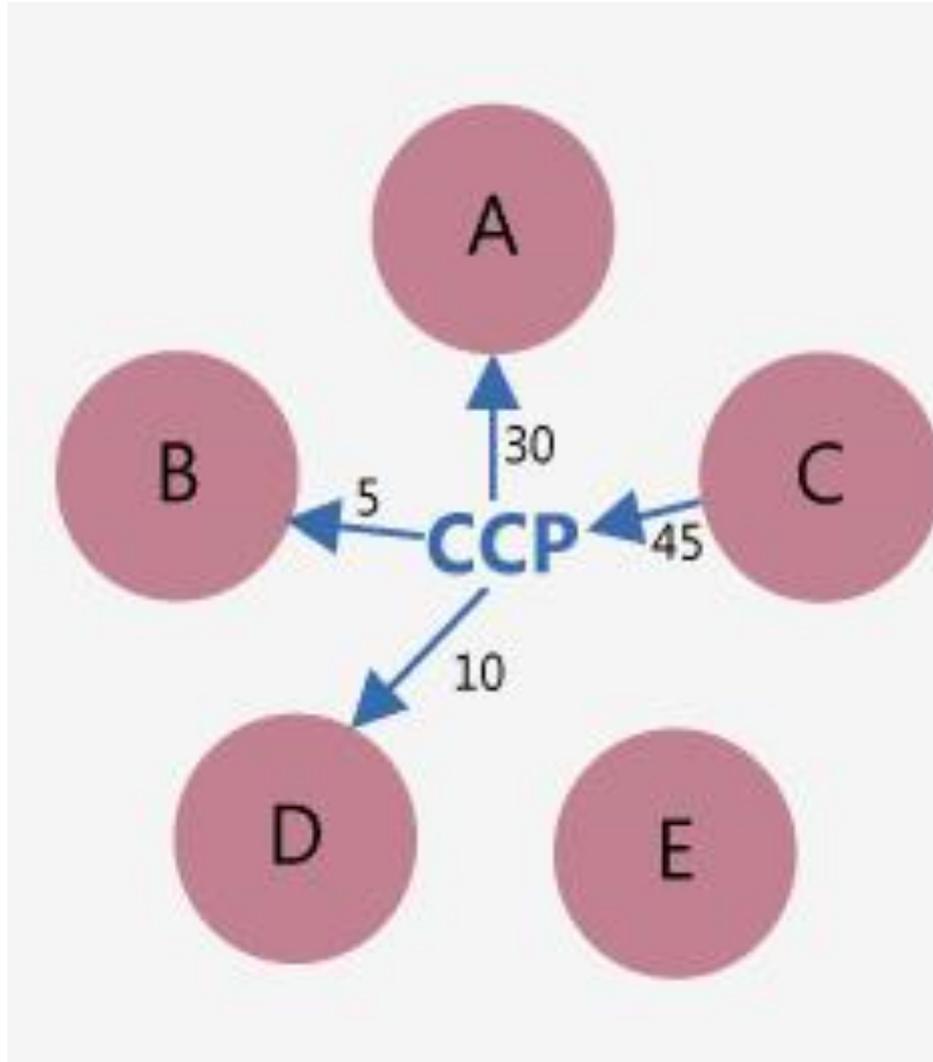
# EMIR. Measure I: central clearing

Non-  
centrally  
cleared  
exposures:

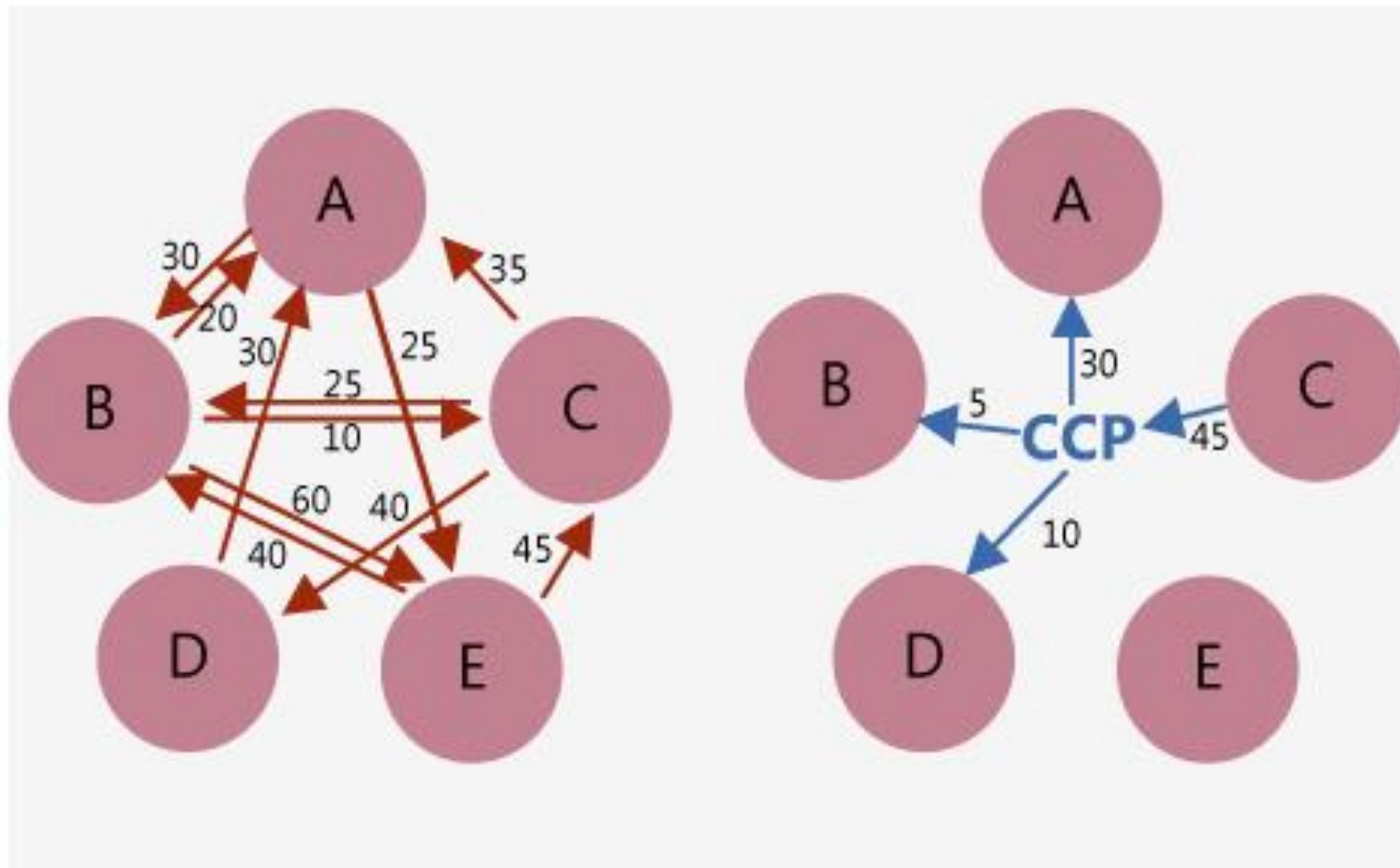


# EMIR. Measure I: central clearing

centrally  
cleared  
exposures:

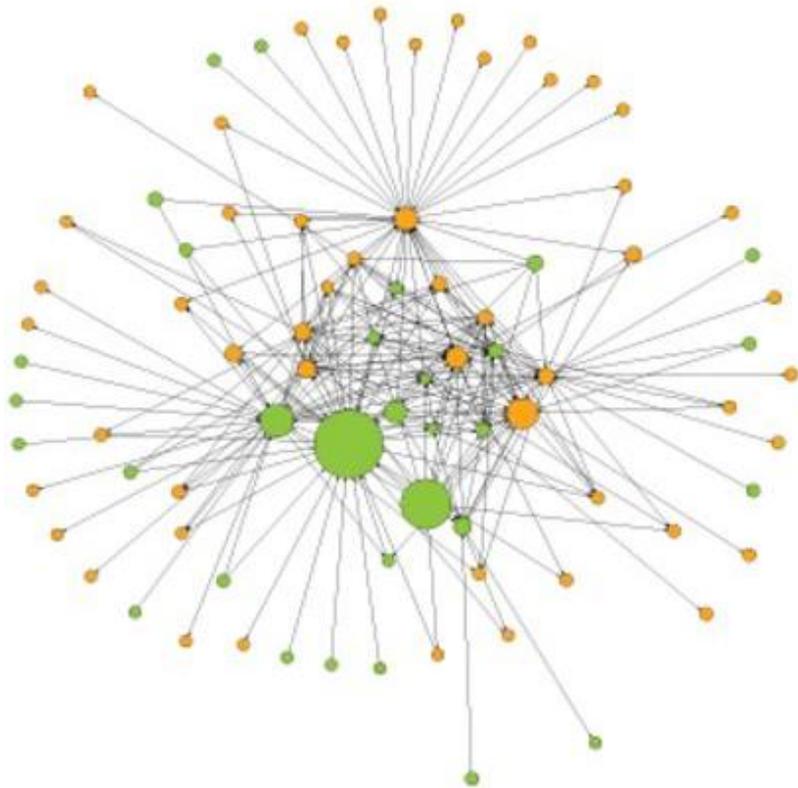


# EMIR. Measure I: central clearing

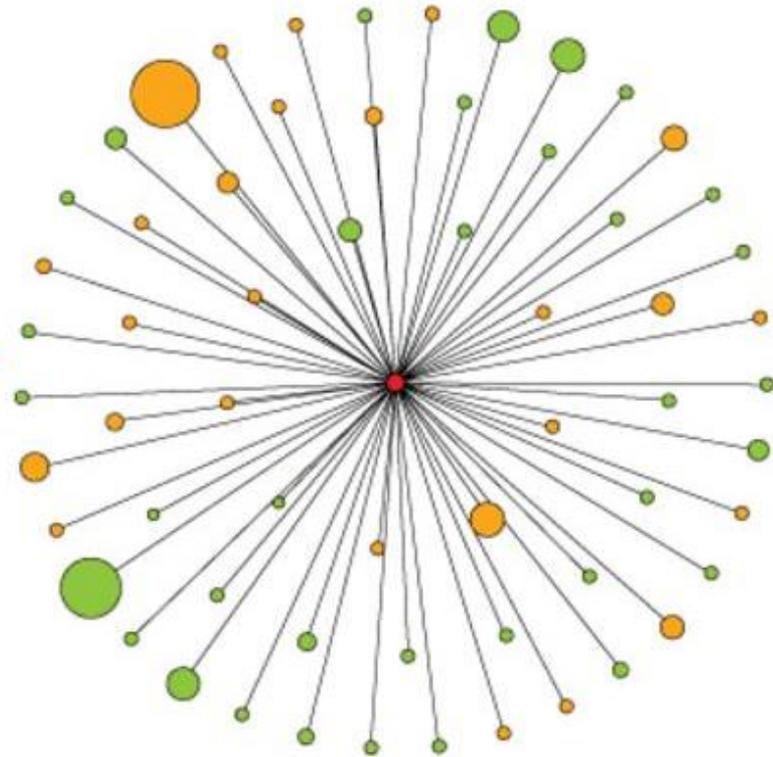


# EMIR. Measure I: central clearing

- Central clearing for OTC transactions:



**Unregulated**



**Regulated**

# Measure II: OTC clearing obligation

# EMIR Regulation. Measure II

OTC clearing obligation:

- Obligation to use CCP for clearing IRS, FRA contracts in G4 currencies, PLN, NOK and SEK + CDS contracts

Introduction: 2015-2016

ESMA Public Register for the Clearing Obligation under EMIR:  
[https://www.esma.europa.eu/sites/default/files/library/public\\_register\\_for\\_the\\_clearing\\_obligation\\_under\\_emir.pdf](https://www.esma.europa.eu/sites/default/files/library/public_register_for_the_clearing_obligation_under_emir.pdf)

(RTS 2015/2205, RTS 2016/592, 2016/1178)

Measure III: exchange of collateral

# EMIR Regulation. Measure III

Exchange of collateral in bilateral transactions:

- obligation introduced gradually

Introduction: from 1st March 2017

RTS 2016/2251

# Measures IV & V

# EMIR Regulation. Measures IV & V

- Measure IV: trading obligation under MIFID II  
Art. 28 & 32 MIFIR: obligation to trade on RM, MTF or OTFs

*Art. 29 section 1 MIFIR: The operator of a regulated market shall ensure that all transactions in derivatives that are concluded on that regulated market are cleared by a CCP.*

- Measure V: reporting obligation to TRs supervised by ESMA

Measures: conclusions

# EMIR Regulation. Measures

- Measure I: central clearing of transactions, especially in derivatives
- Measure II: OTC clearing obligations
- Measure III: exchange of collateral in bilateral transactions
- Measure IV: trading obligation under MIFID II
- Measure V: reporting obligation to TRs supervised by ESMA

**Conclusion: as a Result of measures II, III, IV there is no retreat from central clearing**

# List of CCPs

# List of EMIR-authorized CCPs I

No	Name of the CCP	Identification Code of CCP (LEI)	Established in the Union or in a Third Country	Country of establishment	Competent authority (if established in the Union)	Date of initial authorisation
1	Nasdaq OMX Clearing AB	54930002A8LR1AA UCU78	In the Union	Sweden	Finansinspektionen	18 March 2014
2	European Central Counterparty N.V.	724500937F740MH CX307	In the Union	Netherlands	De Nederlandsche Bank (DNB)	1 April 2014
3	KDPW_CCP	2594000K576D5CQ X1987	In the Union	Poland	Komisja Nadzoru Finansowego (KNF)	8 April 2014
4	Eurex Clearing AG	529900LN3S50JPU 47S06	In the Union	Germany	Bundesanstalt für Finanzdienstleistungs aufsicht (Bafin)	10 April 2014
5	Cassa di Compensazione e Garanzia S.p.A. (CCG)	8156006407E264D2 C725	In the Union	Italy	Banca d'Italia	20 May 2014
6	LCH SA	R11O4YJ0O79SMW VCHB58	In the Union	France	Autorité de Contrôle Prudentiel et de Résolution (ACPR)	22 May 2014
7	European Commodity Clearing	529900M6JY6PUZ9 NTA71	In the Union	Germany	Bundesanstalt für Finanzdienstleistungs aufsicht (Bafin)	11 June 2014
8	LCH Ltd	F226TOH6YD6XJB 17KS62	In the Union	United Kingdom	Bank of England	12 June 2014

Source: [https://www.esma.europa.eu/sites/default/files/library/ccps\\_authorized\\_under\\_emir.pdf](https://www.esma.europa.eu/sites/default/files/library/ccps_authorized_under_emir.pdf)

# List of EMIR-authorised CCPs II

9	Keler CCP	529900MHIW6Z8O TOAH28	In the Union	Hungary	Central Bank of Hungary (MNB)	4 July 2014
10	CME Clearing Europe Ltd	6SI7IOVECKBHVY BTB459	In the Union	United Kingdom	Bank of England	4 August 2014
11	CCP Austria Abwicklungsstelle für Börsengeschäfte GmbH (CCP.A)	529900QF6QY66Q ULSI15	In the Union	Austria	Austrian Financial Market Authority (FMA)	14 August 2014
12	LME Clear Ltd	213800L8AQD59D3 JRW81	In the Union	United Kingdom	Bank of England	3 September 2014
13	BME Clearing	5299009QA8BBE2 OOB349	In the Union	Spain	Comisión Nacional del Mercado de Valores (CNMV)	16 September 2014
14	OMIClear - C.C., S.A.	5299001PSX07X2J X4W10	In the Union	Portugal	Comissão do Mercado de Valores Mobiliários (CMVM)	31 October 2014
15	ICE Clear Netherlands B.V. <sup>1</sup>	7245003TLNC4R9X FDX32	In the Union	Netherlands	De Nederlandsche Bank (DNB)	12 December 2014
16	Athens Exchange Clearing House (Athex Clear)	213800IW53U9JMJ 4QR40	In the Union	Greece	Hellenic Capital Market Commission	22 January 2015
17	ICE Clear Europe Limited (ICE Clear Europe)	5R6J7JCQRIPQR1 EEP713	In the Union	United Kingdom	Bank of England	19 September 2016

Source: [https://www.esma.europa.eu/sites/default/files/library/ccps\\_authorized\\_under\\_emir.pdf](https://www.esma.europa.eu/sites/default/files/library/ccps_authorized_under_emir.pdf)

# Classes of instruments

# Classes of financial instruments covered by the CCP's authorisation I

<i>Please refer to Table 3 below for more information on the definition of the classes</i>				Nasdaq OMX Clearing AB	European Central Counterparty N.V.	KDPW_CCP
MiFID financial instruments	<b>Securities</b> (financial instruments referred to in points 1, 2 and 3 of Section C of Annex I of MiFID)	Equity	OTC <sup>ii</sup>		1 April 2014	8 April 2014
			RM <sup>iii</sup>		1 April 2014	8 April 2014 and <b>9 August 2016</b>
		Debt	OTC			8 April 2014 and <b>9 August 2016</b>
			RM			8 April 2014 and <b>9 August 2016</b>
	<b>Derivatives</b> (financial instruments referred to in points 4 to 10 of Section C of Annex I of MiFID)	Equity	OTC	18 March 2014		
			RM	18 March 2014		8 April 2014
		Debt	OTC	18 March 2014		
			RM	18 March 2014		8 April 2014
		Interest Rate	OTC	18 March 2014		8 April 2014 and <b>9 August 2016</b>
			RM	18 March 2014		8 April 2014
		Inflation Rate	OTC			
			RM			
	Credit	OTC				
		RM				

# Classes of financial instruments covered by the CCP's authorisation I

Currencies	OTC	<del>25 February 2015*</del>		
	RM	<del>25 February 2015*</del>		8 April 2014
Commodities	OTC	18 March 2014		
	RM	18 March 2014		
Emission/Climatic	OTC	18 March 2014		
	RM	18 March 2014		
Freight	OTC			
	RM	7 April 2014 <sup>y</sup>		

# Classes of financial instruments covered by the CCP's authorisation I

<i>Please refer to Table 3 below for more information on the definition of the classes</i>				Nasdaq OMX Clearing AB	European Central Counterparty N.V.	KDPW_CCP
Other	Repo	Equity Debt	OTC	18 March 2014		8 April 2014
			RM			
Other	Securities Lending	Equity Debt	OTC			
Other	Collateralised € Deposits	N.A.	OTC			
Other	Derivatives that are not MiFID financial instruments	Commodities, Emission/ Climatic, Freight				
Other	Assets that are not MiFID financial instruments	Commodities, Emission/ Climatic, Freight		18 March 2014		

**Please note:** table will slightly change once MIFID II comes into force

Source: [https://www.esma.europa.eu/sites/default/files/library/ccps\\_authoured\\_under\\_emir.pdf](https://www.esma.europa.eu/sites/default/files/library/ccps_authoured_under_emir.pdf)

# Re-authorisation under EMIR

# List of CCPs that have been granted an extension of authorisation

No	Name of the CCP	Identification Code of CCP (LEI)	Established in the Union or in a Third Country	Country of establishment	Competent authority (if established in the Union)	Date of extension of authorisation
1	CME Clearing Europe Ltd	6SI7IOVECKBHVY BTB459	In the Union	United Kingdom	Bank of England	<i>9 January 2015</i>
						<i>18 September 2015</i>
						<i>30 October 2015</i>
2	Nasdaq OMX Clearing AB	54930002A8LR1AA UCU78	In the Union	Sweden	Finansinspektionen	<del><i>25 February 2015<sup>2</sup></i></del>
3	LCH Ltd	F226TOH6YD6XJB 17KS62	In the Union	United Kingdom	Bank of England	<i>27 March 2015</i>
4	Eurex Clearing AG	529900LN3S50JPU 47S06	In the Union	Germany	Bundesanstalt für Finanzdienstleistungs aufsicht (BaFin)	<i>3 July 2015</i>
5	BME Clearing	5299009QA8BBE2 OOB349	In the Union	Spain	Comisión Nacional del Mercado de Valores (CNMV)	<i>21 July 2015</i>
6	LCH Ltd	F226TOH6YD6XJB 17KS62	In the Union	United Kingdom	Bank of England	<i>21 July 2016</i>
7	KDPW_CCP	2594000K576D5CQ XI987	In the Union	Poland	Komisja Nadzoru Finansowego (KNF)	<i>9 August 2016</i>

# Legal status of EMIR Authorisation

# Legal status of EMIR Authorisation

Art. 14 EMIR:

„[...]”

2. Once authorisation has been granted [...], it shall be effective for the entire territory of the Union.

3. Authorisation referred to in paragraph 1 shall be granted only for activities linked to clearing and shall specify the services or activities which the CCP is authorised to provide or perform including the classes of financial instruments covered by such authorisation.

4. A CCP shall comply at all times with the conditions necessary for authorisation. [...]”

# Legal status of EMIR Authorisation

However, please note:

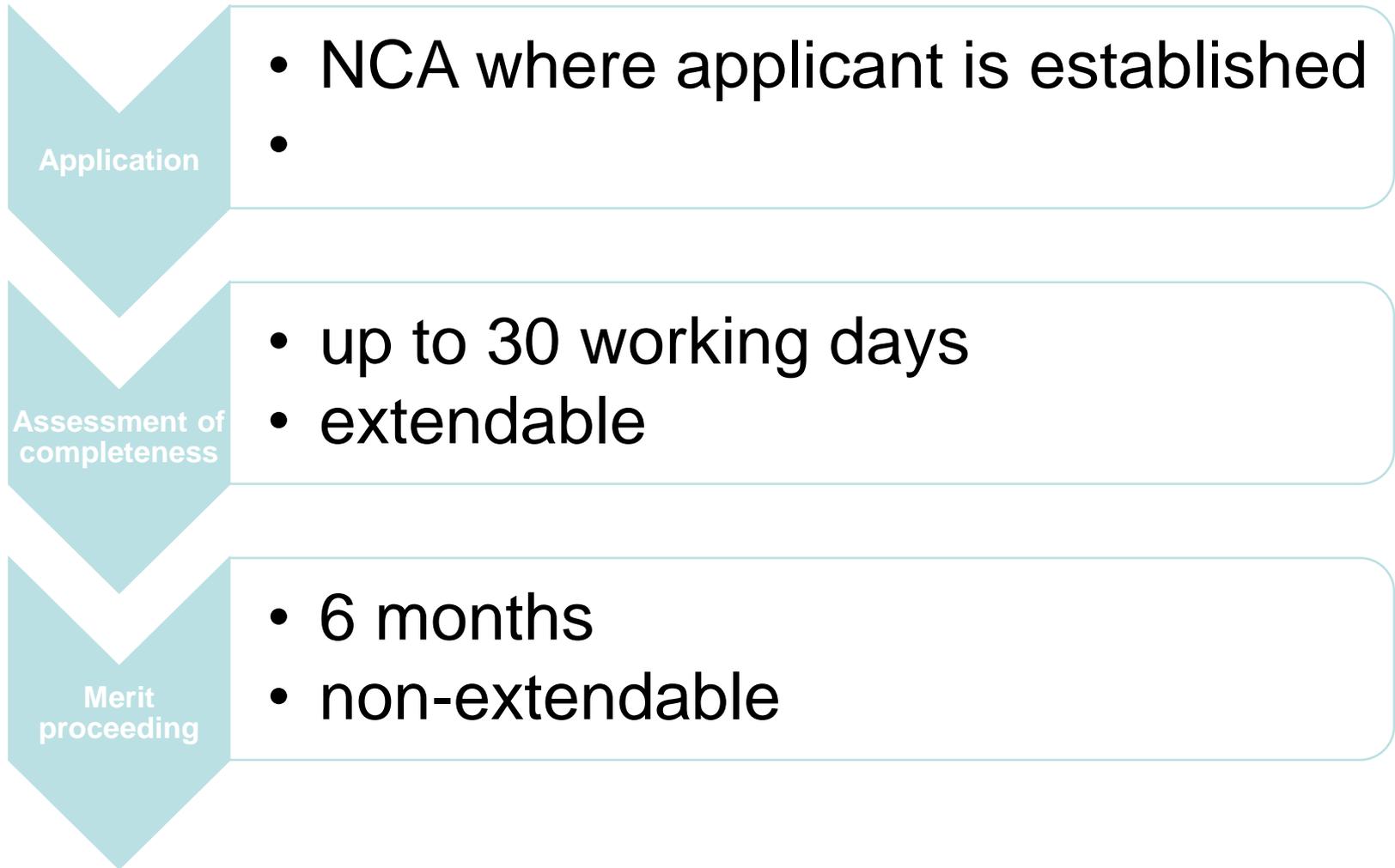
Art. 14 EMIR:

„[...]”

5. Authorisation [...] shall not prevent Member States from adopting or continuing to apply, in respect of CCPs established in their territory, additional requirements including certain requirements for authorisation under Directive 2006/48/EC.”

# Authorisation under EMIR. Stages

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**Authorisation or Decline**

# Authorisation under EMIR. Milestones

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- Clearing House X's application for authorisation;
- Assessment of the completeness of the X's application;
- Determination of the completeness of the X's application;
- Administrative proceedings regarding the X's application – 4 months;
- Establishment of the College – up to 30 days from completeness;
- Submission of the X's Risk Assessment Report to the College – up to 4 months from determination of the completeness
- Meeting of the X's College;
- Joint opinion of the College – 30 days from receipt of RAR;
- Authorisation Decision of an NCA according to national law;
- Notification of the X's authorisation to ESMA.

Authorisation under EMIR. College

# Authorisation under EMIR. College I

## **Legal basis for the establishment and functioning of Applicant X's college:**

- Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (EMIR), especially Article 18 and 19;
- Guidelines and Recommendations regarding written agreements between members of CCP colleges;
- Standard written agreement for the establishment and functioning of the college of CCP A – Annex 1 to the Guidelines and Recommendations regarding written agreements between members of CCP colleges;
- ESMA's opinion on the composition of CCP colleges under EMIR.

# Authorisation under EMIR. College II

## **Establishment of a College for an Applicant:**

- The CCP's competent authority shall establish a college within 30 calendar days of the submission of a complete application for authorisation (Article 18 (1) of EMIR);
- The composition of the college according to Article 18 (2) of EMIR;
- Standard written agreement for the establishment and functioning of the college of CCP – the formal proceedings;
- Formation of the College according to section 3 of the written agreement;
- Annual update of the composition of the College in accordance with Article 18 (2) of EMIR – paragraph 3.4 of the written agreement.

# Authorisation under EMIR. College III

**According to Article 18(2) of EMIR the college for a CCP shall consist of:**

- (a) ESMA;**
- (b) the CCP's competent authority;**
- (c) the competent authorities responsible for the supervision of the clearing members of the CCP that are established in the three Member States with the largest contributions to the default fund of the CCP referred to in Article 42 on an aggregate basis over a one-year period;**
- (d) the competent authorities responsible for the supervision of trading venues served by the CCP;**
- (e) the competent authorities supervising CCPs with which interoperability arrangements have been established;**
- (f) the competent authorities supervising central securities depositories to which the CCP is linked;**
- (g) the relevant members of the ESCB responsible for the oversight of the CCP and the relevant members of the ESCB responsible for the oversight of the CCPs with which interoperability arrangements have been established;**
- (h) the central banks of issue of the most relevant Union currencies of the financial instruments cleared.**

# Authorisation under EMIR. College IV

## **Main tasks of the college** [Art. 18 section 4 EMIR]:

„The college shall, without prejudice to the responsibilities of competent authorities under this Regulation, ensure:

- (a) the preparation of the opinion referred to in Article 19;
- (b) the exchange of information, including requests for information pursuant to Article 84;
- (c) agreement on the voluntary entrustment of tasks among its members;
- (d) the coordination of supervisory examination programmes based on a risk assessment of the CCP; and
- (e) the determination of procedures and contingency plans to address emergency situations, as referred to in Article 24.”

# Authorisation under EMIR. College V

## Article 15 section 5 EMIR:

„The establishment and functioning of the college shall be based on a written agreement between all its members. [...]”

Template for such an agreement developed by ESMA. See:

*ESMA Guidelines and Recommendations regarding written agreements between members of CCP colleges*

[https://www.esma.europa.eu/sites/default/files/library/2015/11/2013-661\\_report\\_gr\\_on\\_college\\_written\\_agreement\\_-\\_final\\_for\\_publication\\_20130604.pdf](https://www.esma.europa.eu/sites/default/files/library/2015/11/2013-661_report_gr_on_college_written_agreement_-_final_for_publication_20130604.pdf)

# Authorisation under EMIR. College VI

## **Functioning of a CCP College on the basis of the Agreement:**

- Working language of the College – paragraphs 4.1–4.2.5 of the agreement;
- Applications received from the Applicant – paragraphs 5.1–5.6 of the agreement;
- Meetings of the College – paragraphs 6.1-6.14 of the agreement;
- On-going risk review – paragraphs 8.1-8.3 of the agreement;
- Organisation and coordination of activities between College Members – paragraphs 9.1-9.3 of the agreement;
- Information requests to the Applicant – paragraphs 10.1-10.2 of the agreement;
- Emergency situation – paragraphs 11.1-11.7 of the agreement;
- Dispute resolution – paragraphs 13.1-13.3 of the agreement;
- Confidentiality – paragraphs 14.1-14.4 of the agreement.

# Authorisation under EMIR. Requirements

# Authorisation under EMIR. Requirements

**Self-assessment temple for all applicants:**

**MFSA**

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MALTA FINANCIAL SERVICES AUTHORITY

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*Assessment of Applicant Central Counterparties (CCP) - EMIR  
Requirements*

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- Source:  
[https://www.mfsa.com.mt/pages/readfile.aspx?f=/Files/LegislationRegulation/regulation/securities/Financial%20Markets/2013\\_03\\_05%20Assessment-App%20CCP-EMIR%20Req.pdf](https://www.mfsa.com.mt/pages/readfile.aspx?f=/Files/LegislationRegulation/regulation/securities/Financial%20Markets/2013_03_05%20Assessment-App%20CCP-EMIR%20Req.pdf).

# Authorisation under EMIR. Requirements

## Self-assessment template for all applicants (continued):

### [A.1] Capital Requirements

*A.1.1 Confirm that the applicant has a permanent and available initial capital of at least €7.5 million. {Art 16 (1) EMIR}*

*A.1.2 Does the CCP have procedures in place to identify all sources of risks that may impact its on-going functions and has considered the likelihood of potential adverse effects on its revenues or expenses and its level of capital? {Art 1 (2) RTS CCP - I}*

*A.1.3 Does the CCP have in place a notification procedure whereby should its capital be lower than 110% of the capital requirements or lower than 110% of EUR7.5million (referred to as the notification threshold) it informs the MFSA accordingly and keeps the Authority updated at least weekly, until the amount of capital held by the CCP returns above the notification threshold? {Art 1 (3) RTS CCP - I}*

# Authorisation under EMIR. Requirements

## **Capital requirements, Article 16**

1. A CCP shall have a permanent and available initial capital of at least EUR 7,5 million to be authorised pursuant to Article 14.
2. A CCP's capital, including retained earnings and reserves, shall be proportionate to the risk stemming from the activities of the CCP. It shall at all times be sufficient to ensure an orderly winding-down or restructuring of the activities over an appropriate time span and an adequate protection of the CCP against credit, counterparty, market, operational, legal and business risks which are not already covered by specific financial resources as referred to in Articles 41 to 44. [...]

+ see further **RTS 152/2013!**

# Authorisation under EMIR. Requirements

## **Specific organizational requirements re.:**

- Senior management and board
- Risk committee
- Record keeping
- Shareholders screening
- Conflicts of interest
- Sound business continuity arrangements
- Outsourcing
  
- See EMIR Articles 26 – 35
- See RTS 153/2013

Authorisation under EMIR. Requirements

## **Specific requirements on conduct of business rules:**

- Participation
- Transparency
- Segregation and portability
  
- See EMIR Articles 36 – 39
- See further RTS 153/2013

# Authorisation under EMIR. Requirements

## **Specific prudential requirements i.a.:**

- Margins
  - Defaults Fund and Default Waterfall
  - Default Procedures
  - Accepted collaterals
  - Investment policy
  - Settlement
- 
- See EMIR Articles 40 – 50
  - See further RTS 153/2013

Authorisation under EMIR. Decision

# Authorisation under EMIR. Decision I

KNF's decision of 8th of April 2014 on the authorisation to provide services as CCP:

## **POLISH FINANCIAL SUPERVISION AUTHORITY**

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DRK/WIRK/4070/3/10/14/KZ

Warsaw, 8 April 2014

### **DECISION**

Pursuant to Article 104.1 of the Code of Administrative Procedure Act of 14 June 1960 (Journal of Laws of 2013, item 367) in connection with Article 11.1 and Article 11.5 of the Act on Supervision of the Financial Market of 21 July 2006 (Journal of Laws of 2012, item 1149, as amended) and Article 14 and Article 17 of Regulation of the European Parliament and of the Council (EU) No 648/2012 of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (Official Journal of the European Union L 201 of 2012, p. 1) in connection with Article 3.2 of the Act on Supervision of the Capital Market of 29 July 2005 (Journal of Laws No. 183, item 1537, as amended),

following a review of the application of 28 June 2013

filed by KDPW\_CCP S.A.

with its registered office in Warsaw

ul. Książęca 4

00-498 Warsaw

# Authorisation under EMIR. Decision II

the Polish Financial Supervision Authority resolves as follows:

**to authorise KDPW\_CCP S.A. to provide clearing services as a CCP to the extent of activities related to the performance of clearing according to the Statute and the Rules of Transaction Clearing (Organised Trading), the Rules of Transaction Clearing (Non-organised Trading), the Clearing Fund Rules and the regulations issued thereunder, attached to the application of KDPW\_CCP S.A., as well as the Rules of the Guarantee Funds Securing the Alternative Trading Systems, attached to the application, i.e.:**

- 1) **clearing transactions concluded on regulated markets under the Rules of Transaction Clearing (Organised Trading) in securities within the meaning of Article 3.1(a) of the Act on Trading in Financial Instruments of 29 July 2005 (Journal of Laws of 2010, No. 211, item 1384, as amended) (hereinafter “Act on Trading in Financial Instruments”) in the wording effective on 8 April 2014 and Point 1 of Section C of Annex I to Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (Official Journal of the European Union 145/1, pp. 263/306) (hereinafter “Markets in Financial Instruments Directive”) in the wording effective on 8 April 2014, and in financial instruments other than securities, referred to in Article 2.1.2 of the Act on Trading in Financial Instruments in the wording effective on 8 April 2014 and Points 2-10 of Section C of Appendix I to the Markets in Financial Instruments Directive in the wording effective on 8 April 2014, to the extent of the following classes of financial instruments:**
  - **securities:**
    - **equity,**
    - **debt;**

# Authorisation under EMIR. Decision III

- derivatives:
  - equity derivatives,
  - debt derivatives,
  - interest rate derivatives,
  - currencies derivatives;
  
- 2) **clearing repo or sell/buy-back transactions concluded outside the regulated market and outside the alternative trading system in transferable securities within the meaning of Article 3.1(a) of the Act on Trading in Financial Instruments in the wording effective on 8 April 2014 and Point 1 of Section C of Appendix I to the Markets in Financial Instruments Directive in the wording effective on 8 April 2014;**
  
- 3) **clearing transactions concluded outside the regulated market under the Rules of Transaction Clearing (Organised Trading) in securities within the meaning of Article 3.1(a) of the Act on Trading in Financial Instruments in the wording effective on 8 April 2014 and Point 1 of Section C of Annex I to the Markets in Financial Instruments Directive in the wording effective on 8 April 2014 to the extent of the following classes of financial instruments:**
  - securities:
    - equity,
    - debt;

# Authorisation under EMIR. Decision IV

- 4) **clearing transactions concluded outside the regulated market under the Rules of Transaction Clearing (Non-organised Trading) in financial instruments other than securities, referred to in Article 2.1.2(c)-(i) of the Act on Trading in Financial Instruments in the wording effective on 8 April 2014 and Points 4-10 of Section C of Appendix I to the Markets in Financial Instruments Directive in the wording effective on 8 April 2014, to the extent of the following classes of financial instruments:**
  - **derivatives:**
    - **interest rate derivatives whose underlying is: WIBOR, POLONIA;**
- 5) **operating a clearing liquidity guarantee system for transactions concluded on the regulated market and in the alternative trading system and transactions concluded outside the regulated market and outside the alternative trading system, including executing activities necessary to ensure availability of financial instruments or cash covered by the system.**

Pursuant to Article 107.4 of the Code of Administrative Procedure, no grounds for the decision shall be given in view of the fact that the request of the party has been granted in its entirety.

## INSTRUCTIONS

If the party is dissatisfied with the decision, it may, pursuant to Article 127.3 of the Code of Administrative Procedure in connection with Article 11.6 of the Act on Supervision of the Financial Market, file a request to the Polish Financial Supervision Authority to re-examine the case. Pursuant to Article 129.2 of the Code of Administrative Procedure in connection

# Authorisation under EMIR. Decision V

with Article 127.3 *in fine* of the Code of Administrative Procedure, a request for the case to be re-examined shall be filed within 14 days of the delivery of this decision to the party.

On behalf of the Polish Financial Supervision Authority

/stamp and illegible signature/

Andrzej Jakubiak  
CHAIRPERSON

POLISH FINANCIAL SUPERVISION AUTHORITY

/round seal/

POLISH FINANCIAL SUPERVISION AUTHORITY

C/C:

1. KDPW\_CCP S.A.  
ul. Książęca 4, 00-498 Warsaw
2. DRK on file

Recognition of a third-country CCP

# Recognition of a third-country CCP

## *Article 25 EMIR*

### **Recognition of a third-country CCP**

1. A CCP established in a third country may provide clearing services to clearing members or trading venues established in the Union only where that CCP is recognised by ESMA.  
[...]

# Recognition of a third-country CCP

Article 25 of EMIR:

„[...]“

2. ESMA, after consulting the authorities referred to in paragraph 3, may recognise a CCP established in a third country that has applied for recognition to provide certain clearing services or activities where:

(a) the Commission has adopted an implementing act in accordance with paragraph 6;

(b) the CCP is authorised in the relevant third country, and is subject to effective supervision and enforcement ensuring full compliance with the prudential requirements applicable in that third country;

(c) cooperation arrangements have been established pursuant to paragraph 7;

(d) the CCP is established or authorised in a third country that is considered as having equivalent systems for [...] [AML & CFM]”

# Recognition of a third-country CCP

Article 25 of EMIR:

„[...]”

3. When assessing whether the conditions referred to in paragraph 2 are met, ESMA shall consult:

- (a) the competent authority of a Member State in which the CCP provides or intends to provide clearing services and which has been selected by the CCP;
- (b) the competent authorities responsible for the supervision of the clearing members of the CCP that are established in the three Member States which make or are anticipated by the CCP to make the largest contributions to the default fund of the CCP referred to in Article 42 on an aggregate basis over a one-year period;
- (c) the competent authorities responsible for the supervision of trading venues located in the Union, served or to be served by the CCP;
- (d) the competent authorities supervising CCPs established in the Union with which interoperability arrangements have been established;
- (e) the relevant members of the ESCB of the Member States in which the CCP provides or intends to provide clearing services and the relevant members of the ESCB responsible for the oversight of the CCPs with which interoperability arrangements have been established;
- (f) the central banks of issue of the most relevant Union currencies of the financial instruments cleared or to be cleared.”

# List of recognised CCPs under EMIR from third countries

# List of CCPs from 3rd countries recognised under EMIR I

id	Name of the CCP	CCP short name	Identification Code of CCP (LEI)	Country of establishment	Date of recognition
1	ASX Clear (Futures) Pty Limited	ASXF	549300ZD7BBOVZFBVHK49	Australia	27 April 2015
2	ASX Clear Pty Limited	ASX	549300JQL1BXTGCCGP11	Australia	27 April 2015
3	Hong Kong Securities Clearing Company Limited	HKSCC	213800NM8ZN1F16ARD34	Hong Kong	27 April 2015
4	HKFE Clearing Corporation Limited	HKFE	213800WPJUJBAXI5162	Hong Kong	27 April 2015
5	OTC Clearing Hong Kong Limited	OTCHK	213800CKBBZUAHHARH83	Hong Kong	27 April 2015
6	The SEHK Options Clearing House Limited	SEOCH	213800NAOHHKRD9IHE35	Hong Kong	27 April 2015
7	Japan Securities Clearing Corporation	JSCC	549300JHM7D8P3TS4S86	Japan	27 April 2015
8	Tokyo Financial Exchange	TFX	353800016BHKLPQSXY33	Japan	27 April 2015
9	Central Depository (Pte) Limited	CDP	549300CMH3J8ASUM8N29	Singapore	27 April 2015
10	Singapore Exchange Derivatives Clearing	SGXDC	549300ZLWT3FK3F0FW61	Singapore	27 April 2015
11	ICE Clear Singapore	ICSG	549300FKHU9M1PAGIO86	Singapore	24 September 2015
12	JSE Clear	JSEC	213800PJDCEXAVMM3J32	South Africa	27 January 2016

# List of CCPs from 3rd countries recognised under EMIR II

13	ICE Clear Canada	ICECA	549300MDWJV6LDHP3U32	Canada	27 January 2016
14	Natural Gas Exchange Inc.	NGX	549300MZWL9C8T4V112	Canada	27 January 2016
15	Canadian Derivatives Clearing Corporation	CDCC	5493004XJK1P32XQLA57	Canada	27 January 2016
16	Asigna Compensacion y Liquidacion	ACYL	549300T5G56HZH1I6F15	Mexico	27 January 2016
17	SIX x-clear AG	SIXX	5493000C6JWJSISPU377	Switzerland	23 March 2016
18	Korea Exchange, Inc.	KRX	549300TJ3RRV6Q1UEW14	South Korea	22 April 2016
19	Chicago Mercantile Exchange, Inc.	CME	SNZ2OJLFK8MNNCLQOF39	United States of America	13 June 2016
20	ICE Clear Credit LLC	ICC	T33OE4AS4QXXS2TT7X50	United States of America	28 September 2016
21	Minneapolis Grain Exchange, Inc.	MGEX	549300RGC\WVZUN04IA69	United States of America	28 September 2016
22	ICE Clear US, Inc.	ICUS	549300HWWR1D8OTS2G29	United States of America	14 December 2016
23	Dubai Commodities Clearing Corporation	DCCC	549300958ME22EPI3U08	United Arab Emirates	29 March 2017
24	The Clearing Corporation of India Ltd	CCIL	335800CNVQFGRCP1PR55	India	29 March 2017
25	Nasdaq Dubai Ltd	NDL	213800QL3V1PYPQMLU38	Dubai International Financial Centre	29 March 2017
26	Japan Commodity Clearing House Co., Ltd.	JCCH	353800014689ADHKNO82	Japan	29 March 2017
27	BM&FBovespa S.A.	BMFB	4GTK5S46E6H318LMDS44	Brazil	29 March 2017
28	Nodal Clear, LLC	NCL	549300LU7QHVE6ILLC47	United States of America	29 March 2017

Licensing depository  
activities under EU law

# Licensing depository activities

- *REGULATION (EU) No 909/2014 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 – [CSDR]*

# Licensing depository activities

## **CSDR objectives:**

*Increasing safety and efficiency of:*

- *securities settlement*
- *settlement infrastructure*

*Introduction of level playing field among European CSDs*

# Licensing depository activities

## **CSDR Article 16:**

- „1. Any legal person that falls within the definition of CSD shall obtain an authorisation from the competent authority of the Member State where it is established before commencing its activities.
2. The authorisation shall specify the core services listed in Section A of the Annex and non-banking-type ancillary services permitted under Section B of the Annex, which the CSD is authorised to provide.
3. A CSD shall comply at all times with the conditions necessary for authorisation.
4. A CSD as well as its independent auditors, shall, without undue delay, inform the competent authority of any substantive changes affecting the compliance with the conditions for authorisation.”

# Licensing depository activities

## **CSDR Procedure for granting authorisation**

### ***- Title III Chapter I of CSDR***

- Procedure similar to licensing under EMIR

- CSDR entry into force: „Article 3(1) shall apply from 1 January 2023 to transferable securities issued after that date and from 1 January 2025 to all transferable securities.”

Thank you for your attention!

mgr Robert Rybski LL.M.

Legal standpoint: 25th of May 2017