

EU requirements on licensing depository and clearing activities on capital markets

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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

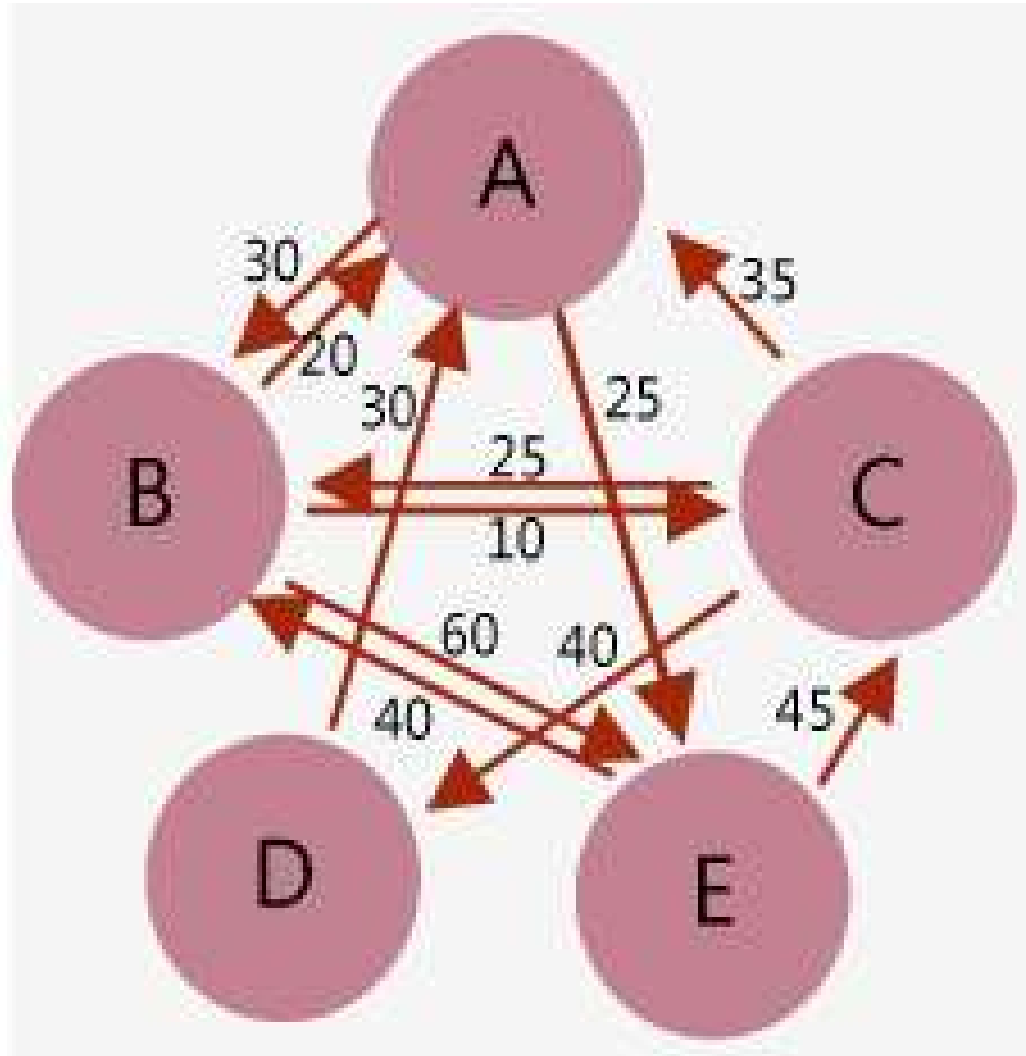
EMIR Regulation. Measures

- 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

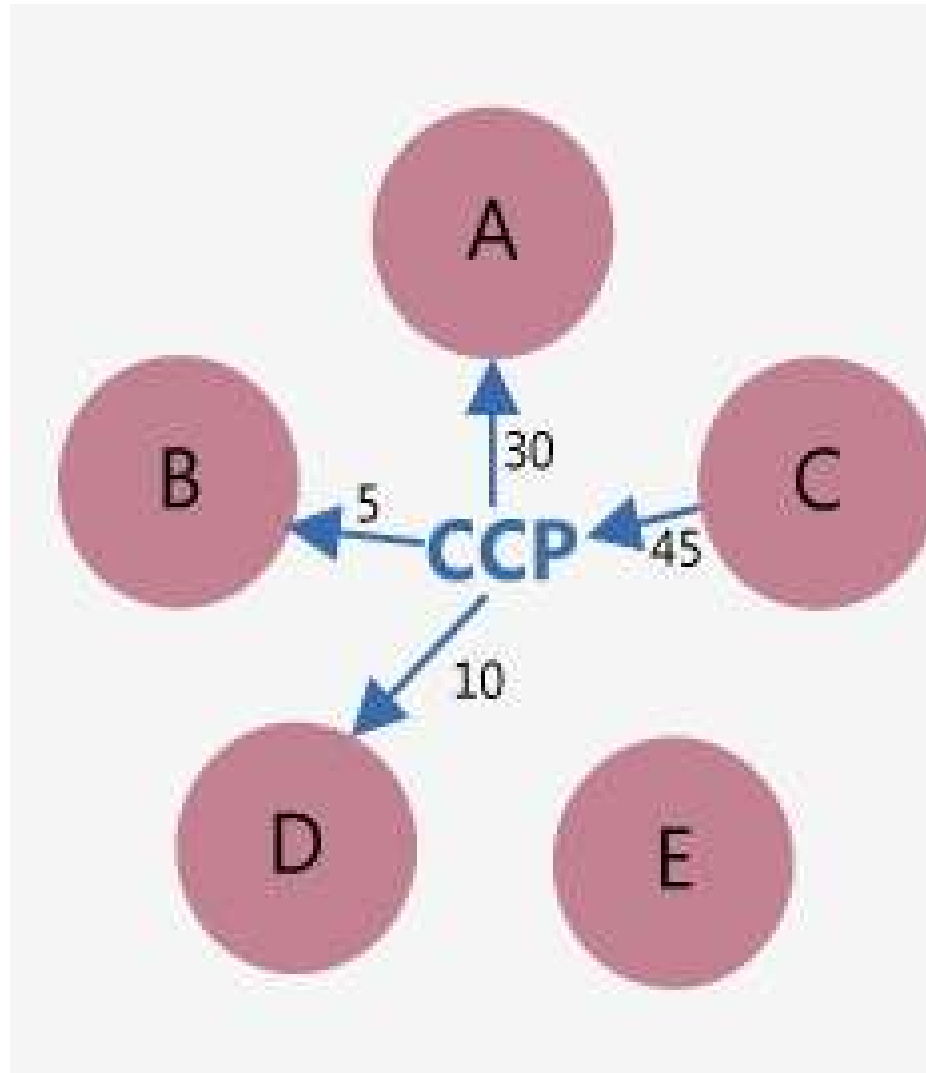
Non-
centrally
cleared
exposures:



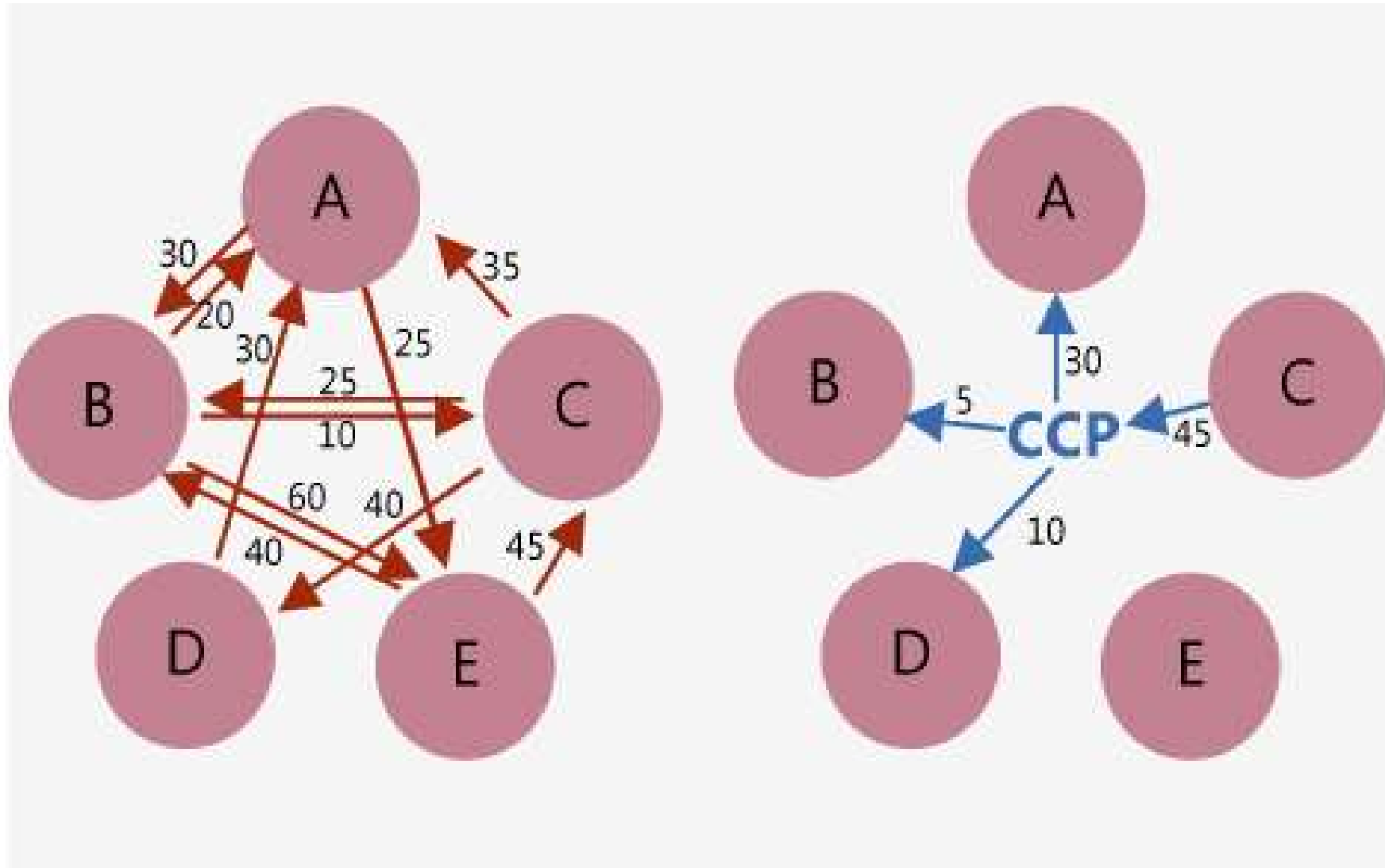
Source: Bank for International Settlements, http://www.bis.org/publ/qtrpdf/r_qt1512/images/grap5-1.jpg

EMIR. Measure I: central clearing

centrally
cleared
exposures:



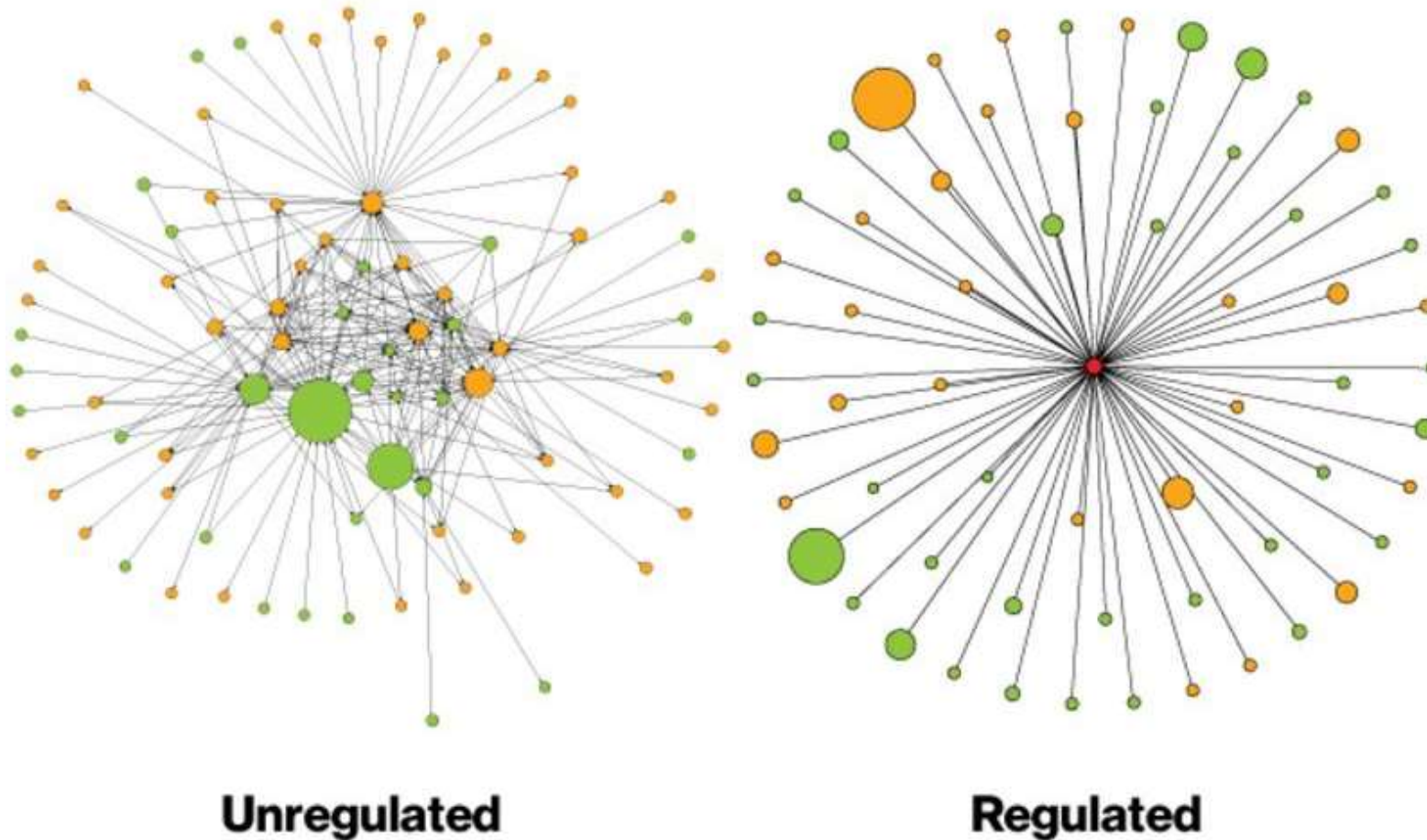
EMIR. Measure I: central clearing



Source: Bank for International Settlements, http://www.bis.org/publ/qtrpdf/r_qt1512/images/grap5-1.jpg

EMIR. Measure I: central clearing

- Central clearing for OTC transactions:



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

(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-authorised 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 XI987 | 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

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. | 5299001PSXO7X2J X4W10 | In the Union | Portugal | Comissão do Mercado de Valores Mobiliários (CMVM) | 31 October 2014 |
| 15 | ICE Clear Netherlands B.V. ¹ | 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_authored_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 | Securities (financial instruments referred to in points 1, 2 and 3 of Section C of Annex I of MiFID) | Equity | OTC ⁱⁱ | | 1 April 2014 | 8 April 2014 |
| | | | RM ⁱⁱⁱ | | 1 April 2014 | 8 April 2014 and 9 August 2016 |
| | | Debt | OTC | | | 8 April 2014 and 9 August 2016 |
| | | | RM | | | 8 April 2014 and 9 August 2016 |
| | Derivatives (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 9 August 2016 |
| | | | 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 | 25 February 2015* | | |
| | RM | 25 February 2015* | | 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 ^v | | |

Source: https://www.esma.europa.eu/sites/default/files/library/ccps_authored_under_emir.pdf

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_authored_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 | 9 January 2015 |
| | | | | | | 18 September 2015 |
| | | | | | | 30 October 2015 |
| 2 | Nasdaq OMX Clearing AB | 54930002A8LR1AA UCU78 | In the Union | Sweden | Finansinspektionen | 25 February 2015² |
| 3 | LCH Ltd | F226TOH6YD6XJB 17KS62 | In the Union | United Kingdom | Bank of England | 27 March 2015 |
| 4 | Eurex Clearing AG | 529900LN3S50JPU 47S06 | In the Union | Germany | Bundesanstalt für Finanzdienstleistungs aufsicht (Bafin) | 3 July 2015 |
| 5 | BME Clearing | 5299009QA8BBE2 OOB349 | In the Union | Spain | Comisión Nacional del Mercado de Valores (CNMV) | 21 July 2015 |
| 6 | LCH Ltd | F226TOH6YD6XJB 17KS62 | In the Union | United Kingdom | Bank of England | 21 July 2016 |
| 7 | KDPW_CCP | 2594000K576D5CQ XI987 | In the Union | Poland | Komisja Nadzoru Finansowego (KNF) | 9 August 2016 |

Source: https://www.esma.europa.eu/sites/default/files/library/ccps_authorized_under_emir.pdf

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:

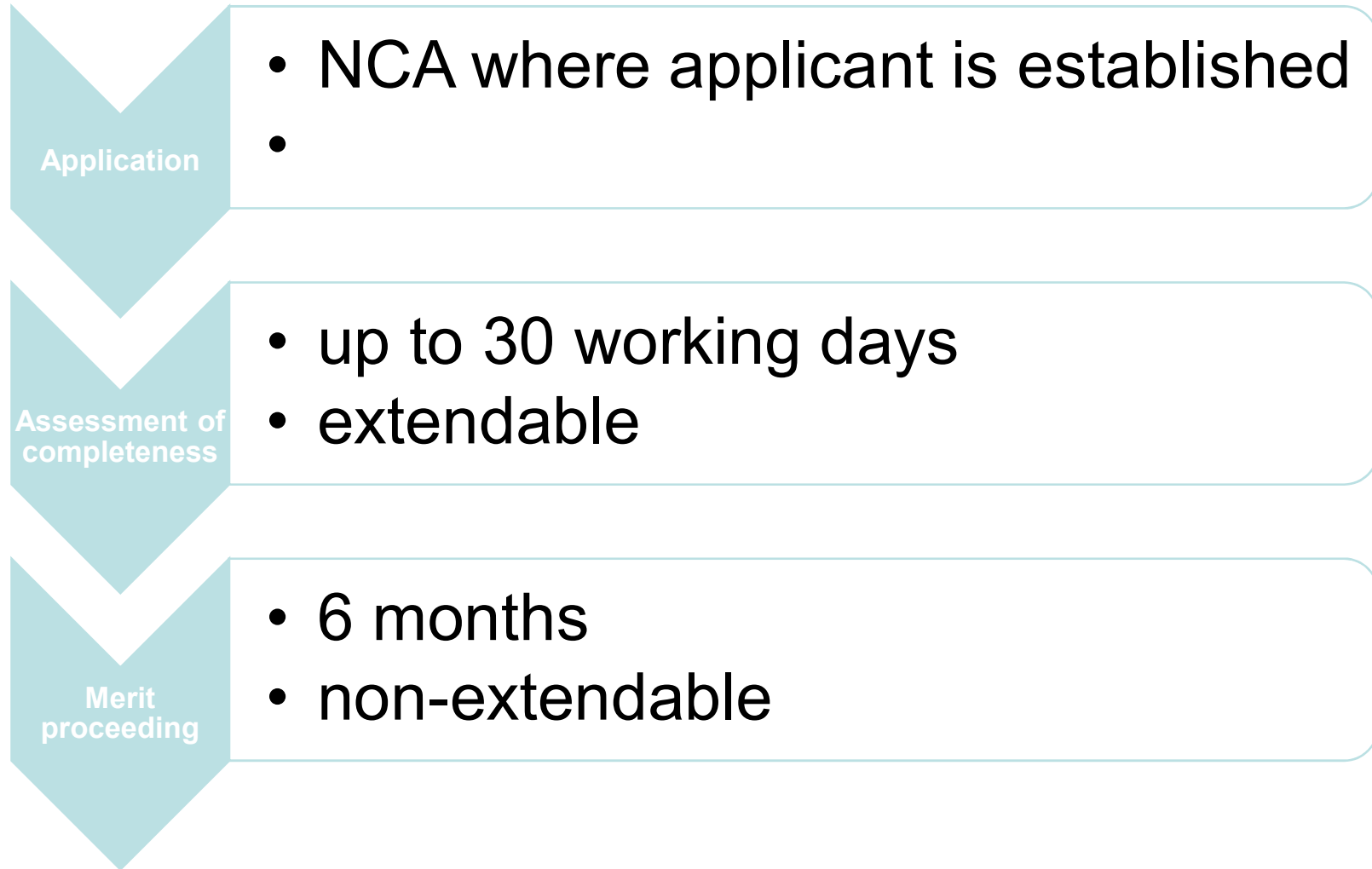
Art. 14 EMIR:

„[...]”

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

Authorisation under EMIR. Stages



Authorisation or Decline

Authorisation under EMIR. Milestones

Authorisation under EMIR. Milestones

- 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. [...]”

Temple 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

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

MALTA FINANCIAL SERVICES AUTHORITY

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

- 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

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

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 | 549300ZD7BBOVZVFVHK49 | 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 | 213800WPJUJBVAVXI5162 | 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 | 353800016BHKLPQSY33 | 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 |

Source: https://www.esma.europa.eu/sites/default/files/library/third-country_ccps_recognised_under_emir.pdf

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 | 549300MZWL9C8T4VI12 | 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\WZUN04IA69 | 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 |

Source: https://www.esma.europa.eu/sites/default/files/library/third-country_ccps_recognised_under_emir.pdf

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