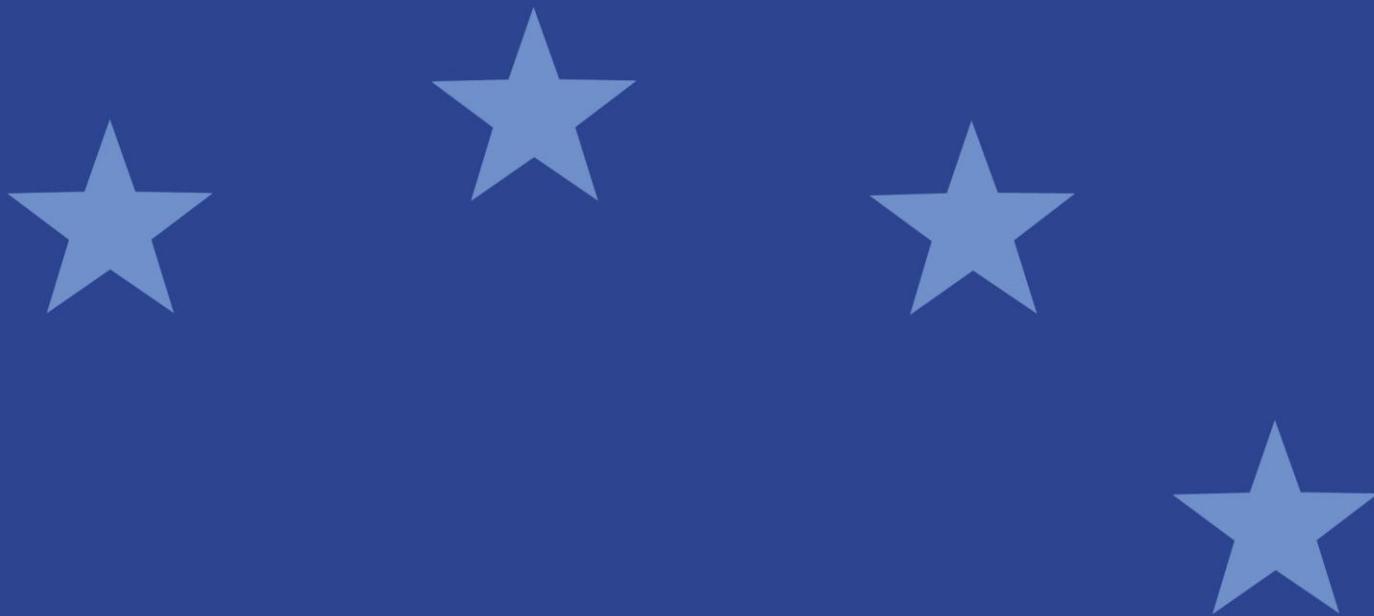




European Securities and  
Markets Authority

# Questions and Answers

**Implementation of the Regulation (EU) No 648/2012 on OTC derivatives,  
central counterparties and trade repositories (EMIR)**



## I. Background

1. 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) entered into force on 16 August 2012. Most of the obligations under EMIR needed to be specified further via regulatory technical standards and they will take effect following the entry into force of the technical standards. On 19 December 2012 the European Commission adopted without modifications the regulatory technical standards developed by the European Securities and Markets Authority (ESMA). These technical standards were published in the Official Journal on 23 February 2013 and entered into force on 15 March 2013.
2. The EMIR framework is made up of the following EU legislation:
  - a. 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);
  - b. Commission Implementing Regulation (EU) No 1247/2012 of 19 December 2012 laying down implementing technical standards with regard to the format and frequency of trade reports to trade repositories according to Regulation (EU) No 648/2012;
  - c. Commission Implementing Regulation (EU) No 1248/2012 of 19 December 2012 laying down implementing technical standards with regard to the format of applications for registration of trade repositories according to Regulation (EU) No 648/2012;
  - d. Commission Implementing Regulation (EU) No 1249/2012 of 19 December 2012 laying down implementing technical standards with regard to the format of the records to be maintained by central counterparties according to Regulation (EU) No 648/2012;
  - e. Commission Delegated Regulation (EU) No 148/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 with regard to regulatory technical standards on the minimum details of the data to be reported to trade repositories;
  - f. Commission Delegated Regulation (EU) No 149/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 with regard to regulatory technical standards on indirect clearing arrangements, the clearing obligation, the public register, access to a trading venue, non-financial counterparties, and risk mitigation techniques for OTC derivatives contracts not cleared by a CCP;
  - g. Commission Delegated Regulation (EU) No 150/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 with regard to regulatory technical standards specifying the details of the application for registration as a trade repository;
  - h. Commission Delegated Regulation (EU) No 151/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 with regard to regulatory technical standards specifying the data to be published and made available by trade repositories and operational standards for aggregating, comparing and accessing the data;

- i. Commission Delegated Regulation (EU) No 152/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 with regard to regulatory technical standards on capital requirements for central counterparties;
  - j. Commission Delegated Regulation (EU) No 153/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 with regard to regulatory technical standards on requirements for central counterparties;
3. The European Commission has already released some Frequently Asked Questions on EMIR<sup>1</sup> to clarify the timing and the scope of EMIR, together with certain issues related to third country CCPs and trade repositories.
  4. In view of ESMA's statutory role to build a common supervisory culture by promoting common supervisory approaches and practices, ESMA has adopted this Q&As document which relates to the consistent application of EMIR. This document is expected to be updated and expanded as and when appropriate.

## **II. Purpose**

5. The purpose of this document is to promote common supervisory approaches and practices in the application of EMIR. It provides responses to questions posed by the general public, market participants and competent authorities in relation to the practical application of EMIR.
6. The content of this document is aimed at competent authorities, under the Regulation, to ensure that in their supervisory activities their actions are converging along the lines of the responses adopted by ESMA. It should also help investors and other market participants by providing clarity on the requirements under EMIR.

## **III. Status**

7. The Q&A mechanism is a practical convergence tool used to promote common supervisory approaches and practices under Article 29(2) of the ESMA Regulation.<sup>2</sup>
8. Therefore, due to the nature of Q&As, formal consultation on the draft answers is considered unnecessary. However, even if they are not formally consulted on, ESMA may check them with representatives of ESMA's Securities and Markets Stakeholder Group, the relevant Standing Committees' Consultative Working Group or, where specific expertise is needed, with other external parties. In this particular case, considering the date of application of the Regulation and the desirability of providing clarity to the market as soon as possible, ESMA has not engaged in such consultations.

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<sup>1</sup> [http://ec.europa.eu/internal\\_market/financial-markets/docs/derivatives/emir-faqs\\_en.pdf](http://ec.europa.eu/internal_market/financial-markets/docs/derivatives/emir-faqs_en.pdf)

<sup>2</sup> Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC Regulation, 15.12.2010, L331/84.



9. ESMA will periodically review these questions and answers to identify if, in a certain area, there is a need to convert some of the material into ESMA Guidelines and recommendations. In such cases, the procedures foreseen under Article 16 of the ESMA Regulation would be followed.

#### **IV. Questions and answers**

10. This document is intended to be continually edited and updated as and when new questions are received. The date on which each section was last amended is included for ease of reference.
11. Questions on the practical application of any of the EMIR requirements, including the requirements in EMIR's technical standards, may be sent to the following email address at ESMA: [post-trading@esma.europa.eu](mailto:post-trading@esma.europa.eu)



## Acronyms Used

CCP	Central Counterparty
CSD	Central Securities Depository
CT	Clearing Threshold
EMIR	European Market Infrastructures Regulation – Regulation (EU) 648/2012 of the European Parliament and Council on OTC derivatives, central counterparties and trade repositories – also referred to as “the Regulation”
ESMA	The European Markets and Securities Authority
ETD	Exchange Traded Derivatives
FC	Financial Counterparty
FX	Foreign Exchange
ITS	Implementing Technical Standards
MiFID	Markets in Financial Instruments Directive – Directive 2004/39/EC of the European Parliament and the Council.
MTF	Multilateral Trading Facility
NCA	National Competent Authority
NFC	Non-financial Counterparty
NFC+	Non-financial Counterparty above the clearing threshold, as referred to in Article 10 of EMIR
NFC-	Non-financial Counterparty below the clearing threshold
OTC	Over-the-counter
Q&A	Question and answer
RTS	Regulatory Technical Standards
TR	Trade Repositories

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## Part I: OTC Derivatives

Date last updated: 20 March 2013

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### OTC Question 1

#### **Definition of OTC derivatives in the context of the notification of the classes of OTC derivatives cleared by CCP (Article 5 of EMIR)**

*The definition of OTC derivatives is provided for in EMIR Article 2 and is relevant for a number of provisions in EMIR, including the positions of OTC derivatives that an NFC shall calculate for the purpose of determining whether it has reached a clearing threshold (Article 10), and the OTC derivative classes that NCAs shall notify to ESMA (Article 5). Should the following be considered OTC derivatives?*

- (a) derivative contracts traded on MTFs;*
- (b) derivative contracts which are not executed on a regulated market, but which share the same characteristics as exchange traded derivatives, so that once cleared they become fungible with ETD*
- (c) derivative contracts executed on non-EU exchanges.*

### OTC Answer 1

The definition of OTC derivatives provided for in Article 2 of EMIR is the following: ‘OTC derivative’ or ‘OTC derivative contract’ means a derivative contract the execution of which does not take place on a regulated market as within the meaning of Article 4(1)(14) of Directive 2004/39/EC or on a third- country market considered as equivalent to a regulated market in accordance with Article 19(6) of Directive 2004/39/EC. Consequently:

- (a) Derivative contracts traded on MTFs are OTC derivatives in the context of EMIR.
- (b) The definition explicitly refers to the place of execution (“a derivative contract the execution of which does not take place on a regulated market”). The characteristics that these contracts have in common with exchange traded derivatives are therefore not relevant for the purpose of the definition of OTC derivatives.
- (c) Derivative contracts executed on non-EU exchanges that are equivalent to a regulated market in accordance with Article 19(6) of MiFID do not count for the purpose of the determination of the clearing threshold. Derivatives traded in other non-EU exchanges will count for the determination of the clearing threshold. To date, there is no publicly available list of non-EU exchange equivalent to a regulated market, as envisaged under Article 19(6) of MiFID

### OTC Question 2

#### **Article 10 of EMIR – Procedure for NFC to notify that they exceed/cease to exceed the clearing threshold**

- (a) When do NFC have to start calculating the clearing threshold (CT) and notify a breach of the CT?*
- (b) Should the non-financial counterparty notify the relevant NCA and ESMA only on the first day it*



*exceeds the threshold, or every day during the 30 business day period mentioned in EMIR Article 10(1)(b)?*

*(c) Should all entities of the group notify the relevant NCA and ESMA, or should there be a single notification per group?*

### **OTC Answer 2**

- (a) As soon as the Commission Delegated Regulation (EU) No 149/2013 (ESMA RTS on OTC derivatives) enter into force (i.e. on 15 March 2013), non-financial counterparties will have to start calculating the CT and to send a notification to ESMA and the relevant NCA when they are above the clearing threshold.
- (b) Non-financial counterparties shall notify the relevant NCAs and ESMA only on the first day that they exceed any of the clearing thresholds. In accordance with EMIR Article 10(1)(b), they will become NFC+ if the rolling average position over 30 working days exceeds the threshold. NFC shall re-notify as soon as possible the relevant NCAs and ESMA when their average position over 30 working days does not exceed the clearing threshold any longer.
- (c) For each Member State in which the group has legal entities which trade OTC derivatives, a notification should be submitted to the NCA once the group has exceeded the threshold. This notification must include, among other things, the names of all NFC group legal entities within that Member State which trade OTC derivatives. The group should also submit a single notification to ESMA, listing all of the NFC group legal entities within the EU which trade OTC derivatives.

### **OTC Question 3**

#### **Article 10 of EMIR – Calculation of the clearing threshold**

*(a) When counting a contract denominated in a currency other than Euro, does the conversion to euro have to be done every day to reflect exchange rate fluctuation?*

*(b) Should the following OTC derivative transactions be counted against the clearing threshold:*

- 1. intragroup transactions*
- 2. contracts which are cleared on a voluntary basis*
- 3. positions taken by the financial subsidiaries of the non-financial counterparty*

### **OTC Answer 3**

- (a) Counterparties are expected to use updated exchange rates every time they calculate the total position to be compared to the clearing threshold.
- (b.1) If two NFC group entities enter into an intragroup transaction with each other which does not

fall within the hedging definition<sup>3</sup>, both sides of the transaction should be counted towards the threshold. The total contribution to the group-level threshold calculation would therefore be twice the notional of the contract. For non-hedging intragroup transactions between one NFC and one FC, only the NFC side of the transaction needs to be counted.

(b.2) OTC contracts cleared on a voluntary basis are included in the calculation of the clearing threshold.

(b.3) As per Article 10(3), only the positions taken by non-financial entities of the same group count for the calculation of the clearing threshold.

#### **OTC Question 4**

##### **Article 11 of EMIR – Responsibility of the FC and NFC**

*Is the FC responsible for assessing whether its counterparty is a NFC above or below the clearing threshold ?*

#### **OTC Answer 4**

NFCs which trade OTC derivatives are obliged to determine their own status against the clearing threshold. FCs should obtain representations from their NFC counterparties detailing the NFC's status. FCs are not expected to conduct verifications of the representations received from NFCs detailing their status and may rely on such representations unless they are in possession of information which clearly demonstrates that those representations are incorrect.

#### **OTC Question 5**

##### **Article 11 of EMIR – Timely confirmation**

*(a) Does confirmation refer to (1) the sending part (i.e. each party must meet the deadline to send the confirmation to the other party) or (2) the signature or matching part (i.e. both parties must meet the deadline to sign or match the confirmation). Is negative affirmation allowed?*

*(b) What is the definition of “where available by electronic means?”*

#### **OTC Answer 5**

(a) The term ‘confirmation’ is defined in Article 1(c) of the Commission Delegated Regulation (EU) No 149/2013 (RTS on OTC derivatives): it means the documentation of the agreement of the counterparties to all the terms of an OTC derivative contract.

Therefore, to comply with the confirmation requirements, the counterparties must reach a legally binding agreement to all the terms of an OTC derivative contract. The RTS implies that both

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<sup>3</sup> As determined under Article 10 of Commission Delegated Regulation (EU) No 149/2013 (ESMA RTS on OTC derivatives)

parties must comply with it and agree in advance on a specific process to do so. Processes under which documentation is deemed to be finalised and accepted by both parties after a fixed deadline has expired would be compliant provided that both counterparties have agreed in advance to confirm by this process.

- (b) Electronic confirmation may be available to the market (e.g. confirmation platforms) but not to a specific counterparty for a variety of legitimate reasons. If the counterparty is able to justify that electronic confirmation is not available to it, then confirmation may be performed by fax, paper, or manually processed emails.

### **OTC Question 6**

#### **Article 4 of EMIR – Exemptions from the clearing obligation**

*When can counterparties start applying for the intragroup exemption from the clearing obligation?*

#### **OTC Answer 6**

Notifications for the intragroup exemptions from the clearing exemptions are not expected to be submitted before the first notification as referred to in Article 5 of EMIR (notifications from NCA to ESMA of the authorised classes of OTC derivatives) is received by ESMA i.e. the date on which the first class of OTC derivatives is notified to ESMA and published in the Public Register.

However, NCAs may facilitate the process of those applications at an early stage where they consider it needed according to the nature and dimension of their markets.

### **OTC Question 7**

#### **Article 6 of EMIR: Public Register**

*When will the Public Register be available on ESMA's website and what type of information will be published in this register?*

#### **OTC Answer 7**

The Public register will contain two types of information:

- 1) The list of the classes of OTC derivatives notified to ESMA.

This section of the register will be published after the notifications are received by ESMA under the procedure described in Article 5(1) of EMIR, i.e. following the authorisation of CCPs under EMIR to clear classes of OTC derivatives.

- 2) The list of classes subject to the clearing obligation.

This section of the register will be published immediately after the entry into force of the RTS specifying the classes of OTC derivatives subject to the clearing obligation. These RTS will be adopted following the procedure described in Article 5(2) of EMIR.

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## Part II: CCPs

Date last updated: 20 March 2013

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### CCP Question 1

#### **Article 18 of EMIR – Most relevant currencies for the determination of participation in a college:**

*Which are the criteria to be used by a new entity that applies for authorisation as a CCP, if the respective entity has not performed any clearing activities before?*

#### **CCP Answer 1**

In the case of a new entity which has not performed any clearing activities before, the determination of the most relevant currencies for the purpose of membership of the CCP college would be performed on the basis of the relative share of each currency in the estimated volumes across all financial products proposed to be cleared by the CCP.

A similar determination would also be made for CCPs which have performed clearing activities for less than one year.

### CCP Question 2

#### **Article 46 of EMIR – collateral requirements and recording of client assets:**

*What is the requirement on a CCP for the recording financial instruments posted to it as margins, default fund contributions or contributions to other financial resources? Is it possible for a CCP to record the value assigned to financial instruments post-haircut?*

#### **CCP Answer 2**

Article 46(1) of EMIR sets out the purpose of haircuts by making reference to the ‘potential’ for the value of the assets posted as collateral to decline. In order to adequately apply haircut requirements set-out in Article 46(1), a CCP needs to have procedures enabling the record of the pre-haircut value of financial instruments actually posted to the CCP by clearing members for their own account or the account of their clients. This is consistent with recording requirements set out in Article 14(3) of Commission Delegated Regulation No 2013/153<sup>4</sup>.

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<sup>4</sup> ‘A CCP shall make, and keep updated, a record of the amounts of margins, default fund contributions and other financial resources referred to in Article 43 of Regulation (EU) No 648/2012, called by the CCP and the corresponding amount actually posted by the clearing member at the end of day and changes to that amount that may occur intraday, with respect to each single clearing member and client account if known to the CCP’.

This concept is therefore not compatible with a situation where the CCP would have procedures providing for just the record of this post-haircut value and where it would routinely impose such a decline in full in respect of every financial instrument that is posted to the CCP at the expense of clients.

### **CCP Question 3**

#### **Article 48 of EMIR – Collateral portability:**

*What is the requirement on a CCP for portability of client assets in a member default scenario – for both individual and omnibus accounts?*

- a) Port the “required collateral” only, less outstanding variation margin payments i.e. the value of assets used to cover liabilities; or*
- b) Port the assigned value of the assets, less outstanding variation margin payments (post-haircut); or*
- c) Port the proceeds from liquidation of assets, less outstanding variation margin payments; or*
- d) Port the assets themselves, less outstanding variation margin payments?*

### **CCP Answer 3**

Article 48 of EMIR establishes the circumstances and parameters under which a CCP must transfer the assets and positions of the clients of defaulted clearing members or may liquidate such assets and positions.

Following a member default, a CCP is required to transfer the assets and positions recorded as being held for the account of the clients of the defaulted clearing member if the conditions defined in Article 48 are met. Otherwise, the CCP may try to transfer the assets and positions, on a best effort basis, but ultimately has the right to liquidate the assets and positions. If the assets of a client of the defaulted clearing members are only partially liquidated then the non-liquidated portion of the assets will be returned to the clients when they are known to the CCP or, if they are not, to the clearing member for the account of its clients.

Article 39(10) of EMIR provides that assets (in respect of segregation and portability) refers to collateral held to cover positions and includes the right to transfer assets equivalent to that collateral or the proceeds of the realisation of any collateral.

### **CCP Question 4**

#### **Article 47 of EMIR – Deposit of financial instruments:**

- a. Can a CCP deposit all financial instruments posted as margins or as default fund contributions in an account with a CSD through a custodian? The financial instruments would be deposited with a custodian who then registers them at the CSD in the name of a*

*nominee of the custodian. Is this practice compatible with EMIR provisions?*

- b. Article 47(3) of EMIR requires collateral to be deposited with the operators of a securities settlement system where such system is available. When can a security settlement system be considered unavailable for the purpose of Article 47(3) of EMIR?*
- c. Can the term 'where available' be construed such that a securities settlement system would not be considered available where it does not offer to keep separate records and accounts enabling a CCP to distinguish, in accounts with the operators of the securities settlement system, the assets and positions held for the account of a client?*

#### **CCP Answer 4**

- a) The operators of a securities settlement system are those notified under the Settlement Finality Directive (98/26/EC). Custodian banks are not generally operators of securities settlement systems. It should be noted that EMIR entered into force before the CSD Regulation and the term CSD is currently not defined in EU legislation.

Depositing financial instruments with an operator of a securities settlement system via a custodian does not constitute a deposit with an operator of a securities settlement system for the purposes of Article 47(3) of EMIR. Such a structure would instead amount to a deposit with an authorised financial institution for the purposes of Article 47(3) of EMIR (assuming the custodian used is an authorised financial institution under Article 44 of Commission Delegated Regulation (EU) No 153/2013 (RTS on CCP requirements) and that the conditions defined in the same Article are respected to ensure that highly secured arrangements for the deposit of financial instruments are adopted).

- b) If a CCP is able to demonstrate that it cannot access a security settlement system that ensures the full protection of financial instruments, i.e. the protection of the CCP from custody risk (in a manner equivalent to the protection under the Settlement Finality Directive) and the protection of its clearing members and their clients from the default of the CCP or the protection of their clients from the default of their clearing members, then the CCP can deposit financial instruments through highly secured arrangements with authorised financial institutions subject to the provisions in Article 45(1) of Commission Delegated Regulation (EU) No 153/2013 (RTS on CCP requirements).
- c) Under Article 39 of EMIR, the requirement for individual segregation is a requirement that the CCP offer to keep separate records and accounts enabling a clearing member to distinguish in accounts with the CCP, the assets and positions held for the account of one or more clients.

Individual segregation within the meaning of Article 39(3) of EMIR applies to assets and positions held at CCP level. Hence, individual segregation does not have to be necessarily reflected at the level of the security settlement system or alternative highly secured arrangements with authorised financial institutions.

Therefore, a security settlement system that ensures the full protection of the financial instruments cannot be considered unavailable only because it does not offer individual segregation of client assets.

## CCP Question 5

### Article 49 of EMIR – Stress-testing, back-testing and sensitivity analysis for new entities

*What parameters, data and methodologies, time horizons should a new entity that applies for authorisation as CCP use in order to perform stress-testing, back-testing or sensitivity analysis, if the respective entity has no clearing members yet?*

### CCP Answer 5

In the case of a new entity which has not performed any clearing activities before, the stress-testing, back-testing programmes or sensitivity analysis would be performed on the basis of the estimated positions/portfolios across all financial products proposed to be cleared by the CCP. Estimates made should meet the requirements set out in Article 47(5) of Commission Delegated Regulation (EU) No 153/2013 (RTS on CCP requirements) and the time horizon and set of data to be used by the CCP should be agreed together with the competent authority.

## CCP Question 6

### Article 49 of EMIR – Model validation for authorisation purposes

*Is it compulsory for a CCP to conduct a comprehensive validation of models, methodologies and risk management framework before getting authorisation, in accordance with to Article 47 Model Validation (of the Commission delegated Regulation (EU) No 153/2013 of 19.12.2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 with regard to regulatory technical standards developed by ESMA on requirements for central counterparties)?*

### CCP Answer 6

Article 47 of Commission Delegated Regulation (EU) No 153/2013 (RTS on CCP requirements) supplements Article 49(1) of EMIR, pursuant to which a CCP must regularly review its models and parameters to ensure their reliability and resilience. Where the CCP intends to adopt any significant change to its models and parameters then it must obtain an independent validation of such changes and the validation of its NCA and of ESMA. The college of the CCP also needs to arrive at a joint opinion approving such changes, in accordance with Article 19 of EMIR. This is all set out in Article 49(1) of EMIR.

Article 41(2) of EMIR is also relevant. It provides that the models and parameters of a CCP must have been validated by a competent authority and approved by a joint opinion of the College, to be reached in accordance with Article 19 of EMIR.

The authorisation process under EMIR will likely ensure that the Article 41(2) requirements are met. In particular, the college joint opinion on the NCA's risk assessment of the CCP could also incorporate the college joint opinion on the NCA's validation of the CCP's models and parameters. Of course the NCA would need to present to the college its assessment on which such joint opinion can be based.

## CCP Question 7

## **Article 14 of EMIR – Authorisation of a CCP:**

What constitutes an activity or service covered by the initial authorisation of a CCP as referred to in Article 15(1) of EMIR?

### **CCP Answer 7**

Article 14(3) of EMIR provides that an authorisation 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. 'Classes of derivatives' is a defined term in EMIR and reference to 'classes of financial instrument' provides a guide as to granularity at which the services or activities authorised will be granted. Applying this definition to activities and services suggests that authorisation should be granted on the basis of activities or services which share a common risk profile. Therefore, an extension of authorisation would be needed where the CCP intends to undertake additional activities or services which expose the CCP to new or increased risks, e.g. on classes of financial instruments with a different risk profile or that have material differences from the CCP's existing product set.

As a practical example, a CCP might be authorised to clear single-name Credit Default Swaps contracts where the reference entities are corporate entities. In this example, the CCP would need to apply for an extension of authorisation where it intends to clear single-name Credit Default Swaps contracts where the reference entities are sovereigns or Credit Default Swaps contracts where the reference is an index.

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## **Part III: Trade repositories**

Date last updated: 20 March 2013

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### **TR Question 1**

#### **Article 9 of EMIR – Classification of financial instruments**

*How the following financial instruments should be classified for reporting and other purposes under EMIR?*

- a. ETD on government bonds (e.g. Bund, Bobl)*
- b. Cross-currency swaps and swaptions*

### **TR Answer 1**

- (a) These financial instruments should be classified as interest rates. The dedicated fields for this asset class should not be filled, since they are not relevant.
- (b) These financial instruments should be classified as interest rates, in line with current market practice.

On the sections to be reported, ESMA finds that where both sections are relevant having in mind the terms of the contract being reported, both fields are to be reported i.e. “option” and “interest rate” for swaption, and “FX” and “interest rate” for cross-currency swaps.



There are two fields for the notional amount currency and one for the notional amount. To avoid that one counterparty report the notional amount in CCY1 while the other would report in CCY2, which would create a reconciliation problem, the Field “Notional Amount” should be denominated in the currency reported in “Notional currency 1”.

## **TR Question 2**

### **TR registration (Article 56)**

- *May a CCP apply for registration with ESMA as a trade repository?*
- *May a CSD apply for registration as a TR?*
- *Must a TR be a separate legal entity than a CCP, CSD or exchange/regulated market?*

### **TR Answer 2**

With reference to CCPs, Article 14 of EMIR specifies that authorisation for CCPs can be given only for activity linked to clearing. In addition Article 4 of the Commission Delegated Regulation (EU) No 153/2013 (RTS on CCP requirements) specifies that “if a CCP provides services linked to clearing that present a distinct risk profile from its functions and potentially pose significant additional risks to it, the CCP shall manage those additional risks adequately. This may include separating legally the additional services that the CCP provides from its core functions, or taking equivalent action in an appropriate way”. On the basis of these provisions, it can be excluded that a CCP can perform any other regulated activity under the same legal entity, as it would not be considered linked to clearing. This would exclude the possibility for CCPs to apply for registration as a trade repository.

With reference to other regulated activities, EMIR and the technical standards have no specific provisions limiting the activity of a TR only to TR related activities.. In addition EMIR explicitly authorise TR to perform ancillary services (Article 78(5) of EMIR)<sup>5</sup> and requires these services to be operationally separate.

However, given that EMIR does not restrict the provision of TR activities to legally separate entities, entities authorised to provide other regulated activities cannot be prevented from applying for registration as a TR unless they are prevented from doing this by other sectoral legislation. In these cases, similarly to the cases of ancillary activities, the regulated activities performed by the TR should be operationally separated from the TR activity.

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<sup>5</sup> Where a trade repository offers ancillary services such as trade confirmation, trade matching, credit event servicing, portfolio reconciliation or portfolio compression services, the trade repository shall maintain those ancillary services operationally separate from the trade repository’s function of centrally collecting and maintaining records of derivatives.



### **TR Question 3**

#### **Article 9 of EMIR – Reporting of collateral and valuation**

How should information on collateral and valuation be reported to TRs?

#### **TR Answer 3**

As specified in Article 3 of Commission Delegated Regulation (EU) No 148/2013 (RTS on reporting to TR), collateral can be reported on a portfolio basis. This means the reporting of each single executed transaction should not include all the fields related to collateral, to the extent that each single transaction is assigned to a specific portfolio and the relevant information on the portfolio is reported on a daily basis (end of day).

With reference to transactions cleared by a CCP, the fields on the contract valuation should be reported on a daily basis at position level, as maintained and valued by the CCP.

### **TR Question 4**

#### **Reporting of outstanding positions following the entry into force of EMIR**

*Article 5 of the Trade Report Regulation appears to require the reporting of every exchange-traded derivative contract entered into from 16 August 2012. Given that the ETD industry maintains positions at contract levels aggregated from daily transactions, would the provision of position level data be more practical, and more meaningful?*

#### **TR Answer 4**

The reporting obligation applies equally to OTC derivatives and ETDs. As such, as specified in Article 5(3-4) of Commission Implementing Regulation (EU) No 1247/2012 (ITS on TR reporting), ETDs which were still outstanding on 16 August 2012 will have to be reported within 90 days of the date of the reporting obligation coming into force if they are still outstanding on that date, and within 3 years of the date of the reporting obligation coming into force, if they are not. However, for reporting of those transactions, there is no need to report separately any life cycle events which occurred before the reporting date. The contract can be reported in its final state or, for contracts which are still outstanding, its state at the time the report is submitted.

### **TR Question 5**

#### **Article 9 of EMIR – Reporting to TRs**

*Will the reporting obligation apply to all ETD transactions concluded on the regulated market?*

#### **TR Answer 5**



The EMIR reporting obligations covers all derivatives.

As noted in EMIR Article 2(5), “derivative’ or ‘derivative contract’ means a financial instrument as set out in points (4) to (10) of Section C of Annex I to Directive 2004/39/EC as implemented by Article 38 and 39 of Regulation (EC) No 1287/2006’.

Questions related to MiFID definitions for product scope are addressed under the Commission’s MiFID Q&A database:

<http://ec.europa.eu/yqol/index.cfm?fuseaction=legislation.showGroup&groupCode=MIFID>

## **TR Question 6**

### **Article 9 of EMIR – Reporting to TRs**

*What is the timeframe of reporting ETD transactions cleared by the CCP?*

#### **TR Answer 6**

Where clearing takes place on the same day of execution, the report should be submitted once to a TR up to 1 working day after the execution, as provided under Article 9 EMIR.

In the rare cases where clearing takes place after the day of execution and after reporting is made, novation should be reported as an amendment to the original report up to 1 day after the clearing took place.

## **TR Question 7**

### **Article 9 of EMIR – Reporting to TRs: Avoidance of duplication**

*In order to avoid the duplication of reported details (according to Article 9(1) of EMIR), could the CCP impose on its clearing members (and, consequently, on counterparties represented by the clearing members in clearing) that transactions accepted by the CCP for clearing are reported only by the CCP to the TR selected by the CCP?*

#### **TR Answer 7**

Article 9 provides that counterparties and CCPs should ensure reporting, not only CCPs. Counterparties and CCPs should ensure that there is no duplication of the reporting details by way of agreeing on the most efficient reporting method, to avoid duplication. In the scenario where the CCP and counterparties use different TRs, it is possible that the CCP reports that the contract has been cleared in a TR different from the TR in which the contract has been originally reported by the counterparties. CCPs and counterparties should then do so with consistent data, including the same trade ID and the same valuation information to be provided by the CCP to the counterparties.

Under Article 9 of EMIR, both the counterparties and the CCP have an obligation to ensure that the report is made without duplication, but neither the CCP nor the counterparties have the right to impose on the



other party a particular reporting mechanism. However, when offering a reporting service the CCP can choose the TR to be used and leave the choice to the counterparty on whether to accept or not the service for its trade to be reported by the CCP on its behalf.