

PRESS RELEASE

ESMA advises Commission on equivalence of non-European derivatives rules

The European Securities and Market Authority (ESMA) has published its [advice](#) to the European Commission on the equivalence of the regulatory regimes for OTC derivatives clearing, central counterparties (CCPs), and trade repositories (TR) of non-EU countries with the European Markets Infrastructure Regulation (EMIR). ESMA has assessed the equivalence of the regulatory regimes of Australia, Hong Kong, Japan, Singapore, Switzerland and the US. The third-country rules were compared with EMIR requirements for central clearing, reporting, CCPs, TRs and non-financial counterparties as well as risk mitigation techniques for uncleared trades.

ESMA proposes conditional equivalence

ESMA considers third-country regimes equivalent where the legal provisions and the level of supervision and enforcement is similar to that of EMIR. ESMA finds the regulatory regimes of Australia and Switzerland for CCPs equivalent to EU rules. Conditional equivalence is proposed to the following regimes:

- Hong Kong, Japan, Singapore, and the US for CCPs;
- the US and Japan for central clearing, requirements for non-financial counterparties and risk mitigation techniques for uncleared trades; and
- the US for TRs.

The European Commission is expected to use ESMA's technical advice to prepare possible equivalence decisions. Where it adopts such a decision, certain provisions of EMIR may be disapplied in favour of equivalent third-country rules and, depending on the specific area determined to be equivalent, ESMA may:

- recognise within the EU a CCP which is authorised outside the EU; or
- recognise within the EU a TR which is authorised outside the EU;

ESMA's advice is based on a factual assessment of the rules of each jurisdiction but has also taken into account possible consequences for the stability and protection of EU entities and



investors that an equivalence decision would have. ESMA's advice has also considered upcoming regulations in several jurisdictions that may impact the equivalence assessment.

Next steps

For Australia, Canada, Hong Kong, India, Singapore, South Korea and Switzerland, ESMA will be delivering its advice on areas not yet covered by 1 October 2013. CCPs from third-countries that want to continue to be offering clearing services directly to EU clearing members will have to apply for ESMA recognition by 15 September 2013.



Notes for editors

1. The different technical advices are available here: <http://www.esma.europa.eu/page/Post-trading-documents>
2. The European regulation on derivatives (Regulation (EC) No. 648/2012 of the European Parliament and the Council on OTC derivatives, central counterparties and trade repositories) has relevant provisions that allow 1) the use by EU counterparties of third country CCPs or Trade Repositories (TRs) when complying with EU rules and 2) the application by EU counterparties of third country rules (instead of the EU ones) to derivatives transactions. Of course, this is subject to an overarching condition that those rules and infrastructures have similar results and bear similar protections than EU ones.
3. The process by which the EU determines this similarity is the equivalence assessment, which takes the form of a regulation adopted by the European Commission. ESMA's role on this process is twofold: 1) to advise the Commission on the equivalence and 2) to recognise third country CCPs and TRs that might apply to ESMA for recognition.
4. ESMA is an independent EU Authority that was established on 1 January 2011 and works closely with the other European Supervisory Authorities responsible for banking (EBA), and insurance and occupational pensions (EIOPA), and the European Systemic Risk Board (ESRB).
5. ESMA's mission is to enhance the protection of investors and promote stable and well-functioning financial markets in the European Union (EU). As an independent institution, ESMA achieves this aim by building a single rule book for EU financial markets and ensuring its consistent application across the EU. ESMA contributes to the regulation of financial services firms with a pan-European reach, either through direct supervision or through the active co-ordination of national supervisory activity.

Further information:

Reemt Seibel

Communications Officer

Tel: +33 (0)1 58 36 42 72

Mob: +33 6 42 48 55 29

Email: reemt.seibel@esma.europa.eu