esma European Securities and Markets Authority

Final report

Technical advice on third country regulatory equivalence under EMIR – US

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Key to the references and terms used in this technical advice

CA: Clearing Agency (a CCP under the SEC registration regime)

CEA: US Commodity and Exchange Act

CFTC: Commodity Futures Trading Commission

DCO: Derivatives Clearing Organisation (a CCP under the CFTC licencing regime)

EMIR: Regulation (EU) No. 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories.

ESAs: European Supervisory Authorities, i.e. ESMA, EBA and EIOPA

ESMA: European Securities and Markets Authority

Exchange Act: US Securities Exchange Act of 1934

FC: Financial Counterparty, within the meaning of EMIR

FOIA: US Freedom of Information Act FOIA

MSBSP: Major Security-Based Swap Participants within the meaning of SEC rules

MSP: Major Swap Participant within the meaning of CFTC rules

NCA: National Competent Authority from the European Union

NFC: Non-Financial Counterparty, within the meaning of EMIR

NFC+: Non-Financial Counterparty that is above the clearing threshold, within the meaning of EMIR

NFC-: Non-Financial Counterparty that is below the clearing threshold, within the meaning of EMIR

RTS: Regulatory Technical Standards

SBS: Security-Based Swaps

SBSD: Security-Based Swap Dealer within the meaning of SEC rules

SD: Swap Dealer, within the meaning of CFTC rules

SEC: Securities and Exchange Commission

SIDCO: Systemically Important Derivatives Clearing Organisation

SIFMU: Systemically Important Market Utility

SRO: Self-Regulatory Organization under the Securities Exchange Act

TR: Trade Repository within the meaning of EMIR

Section I

Executive summary

1. The European Commission mandated ESMA on 11 October 2012 to provide it with technical advice on the equivalence between the US regulatory regime and different aspects of the EU regulatory regime under Regulation (EC) No. 648/2012 of the European Parliament and the Council on OTC derivatives, central counterparties (CCPs) and trade repositories (TRs)[1]. The mandate was subsequently reviewed to postpone the deadline to provide the advice and to change its scope in relation to certain jurisdictions.

2. These specific areas concern: 1) the recognition of third country CCPs; 2) the recognition of third country TRs; and 3) the identification of potentially duplicative or conflicting requirements regarding the clearing obligation, reporting obligation, non-financial counterparties and risk-mitigation techniques for OTC derivative contracts not cleared by a CCP.

3. **This report sets out ESMA's advice to the European Commission in respect of the equivalence between the US regulatory regime and the EU regulatory regime under EMIR in respect of the recognition of third country CCPs, the recognition of TRs and for the clearing obligation, reporting obligation, non-financial counterparties and risk mitigation techniques for uncleared trades.**

4. The equivalence assessment conducted by ESMA follows an objective-based approach, where the capability of the regime in the third country to meet the objectives of the EU Regulation is assessed from a holistic perspective. The analysis of the differences and similarities has been conducted as factually as possible. The advice to the Commission has been based on that factual assessment but has also taken into account the analysis of the consequences for the stability and protection of EU entities and investors that an equivalence decision would have in those specific areas where the legally binding requirements are not considered equivalent.

5. The European Commission is expected to use ESMA's technical advice to prepare possible implementing acts concerning the equivalence between the legal and supervisory framework of the US under EMIR. Where the European Commission adopts such an implementing act then ESMA may recognise a CCP or a TR authorised in that third country. ESMA's conclusions in respect of this technical advice should not be seen to prejudge any final decision of the European Commission or of ESMA.

[1] Hereafter the Regulation or EMIR.

Introduction

1. The European Commission mandated ESMA on 11 October 2012 to provide it with technical advice on the equivalence between the US regulatory regime and three specific aspects of the EU regulatory regime under EMIR. On 27 February 2013, the Commission amended the original mandate to postpone the deadlines for the delivery of the technical advice by ESMA. For the US the original deadline of 15 March 2013 was changed to 15 June 2013. On 13 June 2013, the European Commission amended the mandate further to postpone the deadlines for the delivery of technical advice by ESMA and to change its scope in respect of certain jurisdictions. For the US the revised deadline of 15 June 2013 was further changed to 1 September 2013 (see Annex I and II).
2. The mandate on equivalence for the US covers three specific areas: 1) the recognition of third country CCPs; 2) the recognition of third country TRs; and 3) the identification of potentially duplicative or conflicting requirements regarding the clearing obligation, reporting obligation, non-financial counterparties and risk-mitigation techniques for OTC derivative contracts not cleared by a CCP.
3. **This report sets out ESMA's advice to the European Commission in respect of the equivalence between the US regulatory regime and the EU regulatory regime under EMIR in respect of the recognition of third country CCPs, the recognition of TRs and for the clearing obligation, reporting obligation, non-financial counterparties and risk mitigation techniques for uncleared trades.**
4. ESMA has liaised with its counterparts in the US (CFTC and SEC) in the preparation of this report and has exchanged materials and views on the key areas of the analysis. However, the views expressed in this report are those of ESMA and ESMA alone is responsible for the accuracy of this advice. ESMA has decided not to launch a public consultation on this advice. The advice is not about a policy option or a legislative measure that could be subject to improvement or reconsideration due to market participants' views or comments. It is a factual comparison of the respective rules of a foreign jurisdiction with the EU regime and an advice on how to incorporate these differences in a possible equivalence decision. ESMA is aware of the effects that such a decision by the Commission could have on market participants, but considers that the key element of this advice is of a factual nature, not a policy one.

Purpose and use of the European Commission's equivalence decision

5. According to Articles 25(6) and 75(1) of EMIR, the European Commission may adopt an implementing act determining that the legal and supervisory arrangements of a third country ensure that CCPs and TRs, which are respectively established or authorised in a specific third country comply with legally binding requirements which are equivalent to the requirements laid down in EMIR. Furthermore, according to Article 13(2) of the legislative act, the Commission may also adopt implementing acts declaring that the legal, supervisory and enforcement arrangements of a third country are equivalent to the clearing and reporting requirements laid down in EMIR (Articles 4, 9, 10 and 11) to avoid duplicative or conflicting rules.

CCPs

6. ESMA may recognise a CCP authorised in a third country under certain conditions. According to Article 25(2)(a) of EMIR one of those conditions is that the Commission has adopted an implementing act in accordance with Article 25(6) of EMIR determining that the legal and supervisory regime in the country in which the CCP is authorised ensures that CCPs authorised there comply with legally binding requirements which are equivalent to those of Title IV of EMIR, that those CCPs are sub-

ject to effective on-going supervision and enforcement in the third country, and that its legal framework provides for an effective equivalent system for the recognition of CCPs authorised under the legal regime of that third country.

7. The European Commission has requested ESMA's technical advice in respect of the US to prepare possible implementing acts under Article 25(6) of EMIR. **This report contains ESMA's advice in respect of the US under Article 25(6) of EMIR.**

Trade repositories

8. TRs authorised in a third country that intend to provide services and activities to entities established in the EU for the purpose of the reporting obligation, must be recognised by ESMA. Such recognition also requires an implementing act of the Commission under Article 75(1) of EMIR determining that the legal and supervisory regime in the country in which the TR is authorised ensure that TRs authorised there comply with legally binding requirements which are equivalent to those of EMIR, that those TRs are subject to effective on-going supervision and enforcement in the third country, and guarantees of professional secrecy exist that are at least equivalent to those of EMIR.

9. The European Commission has requested ESMA's technical advice in respect of the US to prepare possible implementing acts under Article 75(1) of EMIR. **This report contains ESMA's advice in respect of the US under Article 75(1) of EMIR.**

Potential duplicative or conflicting requirements on marketparticipants

10. In accordance with Article 13(1) of EMIR, the Commission, assisted by ESMA, must monitor, prepare reports and recommend possible action to the European Parliament and the Council on the international application of the clearing and reporting obligations, the treatment of non-financial undertakings and the risk mitigation techniques for OTC trades that are not cleared by a CCP, in particular with regard to potential duplicative or conflicting requirements on market participants.

11. The Commission may adopt implementing acts declaring that the legal, supervisory and enforcement arrangements of a third country are equivalent to the respective requirements in EMIR, ensure an equivalent protection of professional secrecy, and are being applied in an equitable and non-distortive manner so as to ensure effective supervision and enforcement in that third country. An implementing act adopted by the Commission declaring that the abovementioned conditions have been fulfilled for a third country shall imply, according to Article 13(3), that if at least one of the counterparties entering into an OTC derivatives transaction is established in that third country and the contract is subject to EMIR, the counterparties will be deemed to have fulfiled the requirements of EMIR by disapplying EMIR provisions and applying the provisions of the equivalent third country regime.

12. The European Commission has requested ESMA's technical advice in respect of the US to prepare possible implementing acts under Article 13(1) and 13(3) of EMIR. **This report contains ESMA's advice in respect of the US under Articles 13(1) or 13(3) of EMIR.**

Determination of equivalence is one of a number of criteria that have to be met

13. The adoption of an implementing act by the European Commission is required to enable a third country CCP or TR to apply to ESMA for recognition. However ESMA reiterates that this technical advice should not be seen to prejudge the European Commission's final decision on equivalence. Furthermore, a determination of equivalence by the European Commission is just one of a number of criteria that have to be met in order for ESMA to recognise a third country CCP or TR so that

they may operate in the EU for regulatory purposes. Positive technical advice or a positive equivalence determination by the European Commission should not be understood as meaning that a third country CCP or TR will automatically be granted recognition by ESMA. Only if all the other conditions set out in Articles 25 and 77 of EMIR are met, can a third country CCP or TR be granted recognition[2].

ESMA's Approach to Assessing Equivalence

14. Concerning the assessment approach taken in preparing this technical advice, ESMA has followed an objective-based approach, where the capability of the regime in the third country to meet the objectives of the EU Regulation is assessed from a holistic perspective. Annexes III to VIII contain a line-by-line analysis of the differences and similarities between the requirements of the third country and those provided for in EMIR. The advice to the Commission which is set out in this section of the report has been based on that line-by-line factual assessment but takes an objective-based approach to determining whether there is equivalence between the requirements of the third country and those provided for in EMIR. In particular, the final column of the tables at Annex III to VIII include conclusions which have been drawn, on a holistic basis, for each topic. These have been drawn by taking into account the fundamental objectives that an equivalence assessment under EMIR should look at (i.e. the promotion of financial stability, the protection of EU entities and investors and the prevention of regulatory arbitrage in respect of CCPs).

15. In providing its technical advice ESMA has taken account of the following:

- The requirements of the ESMA Regulation.
- The principle of proportionality: that the technical advice should not go beyond what is necessary to achieve the objective of the implementing acts set out in the legislative act.
- The objectives of coherence with the regulatory framework of the Union.
- That ESMA is not confined to elements that should be addressed by the implementing acts but may also indicate guidelines and recommendations that it believes should accompany the delegated acts to better ensure their effectiveness.
- The need for horizontal questions to be dealt with in a similar way to ensure coherence between different areas of EMIR.
- The desirability that ESMA's technical advice cover the subject matters described by the delegated powers included in the relevant provisions of the legislative act and its corresponding recitals as well as in the relevant Commission's request for technical advice.
- That ESMA should address to the Commission any question it might have concerning the clarification on the text of the legislative act.

[2] One of these requirements is that ESMA has established cooperation arrangements with the relevant competent authorities of the third country. ESMA is currently in discussions with the jurisdictions subject to this technical advice regarding such cooperation arrangements.

Section II. Technical advice on CCPs

Part I – Effective on-going supervision and enforcement

16. The US financial supervisory regime is a robust one with significant track record and decades-long experience in financial markets.

17. Entities providing clearing services as a CCP in the US are required to be registered with either the SEC or the CFTC, or both, depending on the type of asset being cleared.

18. The CFTC is an independent agency of the United States government that regulates futures and option markets. The Commodity Futures Trading Commission Act of 1974 created the CFTC, to replace the U.S. Department of Agriculture's Commodity Exchange Authority, as the independent federal agency responsible for regulating the futures trading industry.

19. The SEC is an agency of the United States federal government. It holds primary responsibility for enforcing the federal securities laws and regulating the securities industry, the nation's stock and options exchanges, and other electronic securities markets in the United States. In addition to the Securities Exchange Act of 1934 (Exchange Act) that created it, the SEC enforces the Securities Act of 1933, the Trust Indenture Act of 1939, the Investment Company Act of 1940, the Investment Advisers Act of 1940, the Sarbanes–Oxley Act of 2002, and other statutes. The SEC was created by Section 4 of the Exchange Act.

CFTC

20. CCPs registered and supervised by the CFTC are known as Derivatives Clearing Organizations (DCOs). There are currently thirteen DCOs designated by the CFTC. Section 5b of the CEA, requires a DCO to register with the CFTC, and prescribes the Core Principles with which the DCO must comply in order to obtain and maintain its registration. There are 18 Core Principles. The Core Principles address compliance, financial resources, participant and product eligibility, risk management, settlement procedures, treatment of funds, default rules and procedures, rule enforcement, system safeguards, reporting, recordkeeping, public information, information sharing, antitrust considerations, governance fitness standards, conflicts of interest, composition of governing boards, and legal risk.

21. Section 5c(c) of the CEA, governs the procedures for review and approval of new products, new rules, and rule amendments submitted to the CFTC by a DCO.

22. Part 39 of the CFTC's Regulations, implements Sections 5b and 5c(c) of the CEA by establishing specific requirements for compliance with the Core Principles as well as procedures for registration and for implementing DCO rules and clearing new products. Part 40 of the CFTC's Regulations, prescribes additional provisions applicable to a DCO's submission of rule amendments and new products to the CFTC.

Supervisory Objectives

23. The primary objective of the CFTC supervisory program is to ensure compliance with applicable provisions of the CEA and implementing regulations, and in particular, the Core Principles applicable to DCOs. The CFTC program takes a risk-based approach.

Application Review

24. In order to register with the CFTC, a DCO must submit an application in the form, and containing the information, specified by the CFTC demonstrating that it complies with the Core Principles. Within 180 days of the submission, the CFTC will approve or deny the application or register the

applicant subject to conditions. During that review period, the CFTC will conduct an on-site review of the prospective DCO's facilities, ask a series of questions, and review all documentation received.

Rule Changes

25. Under the CEA as amended by the Dodd-Frank Act, a DCO may implement a new rule or rule amendment ten business days after providing to the CFTC a written certification that the new rule or rule amendment complies with the CEA and CFTC regulations. The CFTC may stay the certification of a new rule or rule amendment for up to 90 days after notifying the DCO that (1) novel or complex issues require additional time to analyze; (2) the DCO has submitted an inadequate explanation of the rule; or (3) the rule is potentially inconsistent with the CEA or the CFTC's regulations. During the stay, the CFTC must provide a public comment period for a minimum of 30 days. If the CFTC has not previously withdrawn the stay, the rule or rule amendment will become effective after the expiration of 90 days, unless the CFTC has determined that the rule or rule amendment is inconsistent with the CEA or CFTC regulations.

26. A DCO may also request CFTC approval of any new rule or rule amendment either before or after it has become effective. The rule or rule amendment will be deemed approved 45 days after receipt of the request by the CFTC, unless the DCO has been notified otherwise. The CFTC may extend the review period for an additional 45 days if it finds that the rule or rule amendment raises novel or complex issues that require additional time for review or that the rule or rule amendment is of major economic significance. The CFTC must approve a new rule or rule amendment unless it finds that the new rule or rule amendment is inconsistent with the CEA or the CFTC's regulations.

27. The CFTC retains the authority to stay the effectiveness of a rule that has already been implemented pursuant to self-certification procedures during the pendency of a CFTC proceeding for filing a false certification or a CFTC proceeding to itself alter or amend the rule pursuant to Section 8a(7) of the CEA.

On-going Monitoring

28. CFTC risk surveillance staff monitors the risks posed to and by DCOs, clearing members, and market participants, including market risk, liquidity risk, credit risk, and concentration risk. This analysis includes reviews of daily, large trader reporting data obtained from market participants, clearing members, and DCOs, which is accessible at the trader, clearing member, and DCO levels. Relevant margin and financial resources are also included within the analysis.

29. CFTC staff regularly conducts back-testing to review margin coverage at the product level and follows up with the relevant DCO regarding any exceptional results. Independent stress testing of portfolios is conducted on a daily, weekly, and ad hoc basis. The independent stress tests may lead to individual trader reviews and/or futures commission merchant (FCM) risk reviews to gain a deeper understanding of a trading strategy, risk philosophy, risk controls and mitigants, and financial resources at the trader and/or FCM level. The traders and FCMs that have a higher risk profile are then reviewed during the CFTC's on-site review of a DCO's risk management procedures.

Examinations

30. The CFTC conducts examinations and the scheduling and scope-setting for these examinations are risk-based in nature. During the planning phase of an examination, CFTC staff considers results of analysis by the CFTC's risk surveillance functions, the previous examination report, the DCO's financial statements, and changes in the DCO's business. Should an issue identified within the prior examination be deemed as material or recurring, a follow-up review on this topic will be included within the current examination. Staff reviews financial statement data received since the last examination for trends or potential concerns. Information obtained either through public news agencies

or through private conversations with DCO staff is considered in order to assess potential risk to the DCO. Typical Core Principles targeted on a regular basis within these examinations include those relating to financial resources, risk management, settlement procedures, treatment of funds, default rules and procedures, and system safeguards.

31. After consideration of the factors described above, an independent, comprehensive, and timely scope of the examination is determined. Typically, a Scope Memo is created along with a Supervisory Plan and Examination Program. These documents ensure all available information is considered, appropriate areas are targeted, and specific review criteria are determined. An Engagement Letter is sent to the DCO with an Initial Document Request List.

32. CFTC examination teams include risk analysts, DCO analysts, and legal specialists. Teams range from three to four individuals for the smallest DCO, to twelve individuals for the largest DCO. CFTC examinations are cross-functional and include staff from the Division of Clearing and Intermediary Oversight's Clearing Policy Group, Risk Surveillance Group, and DCO Review Group. Joint examinations may be conducted with the SEC when appropriate.

33. The examination team participates in a series of meetings with the DCO at its facility. CFTC staff communicates extensively with relevant DCO staff, including senior management, and reviews documentation following the guidelines established within the examination Scope Memo. Independent testing of the data produced by the DCO is included within the examination process. When relevant, walk-through testing is conducted for key DCO processes.

34. Upon completion of the examination, CFTC staff drafts a report to the CFTC. This report summarizes general information regarding the DCO, the scope of the current review, key elements of the examination, and the results of the examination, including any issues of concern. In addition, an Exam Report is created and distributed to key individuals, including the DCO's senior management.

Enforcement

35. Deficiencies noted within the Exam Report are communicated to the DCO prior to the issuance of the report. Various measures are used by the CFTC to assure that the DCO appropriately addresses such issues, including escalating communications within the DCO management and requiring the DCO to demonstrate, in writing, timely correction of such issues. The CFTC has additional means to enforce compliance, including the CFTC's ability to sue the DCO in federal court for civil monetary penalties, issue a Cease and Desist order, or suspend or revoke the registration of the DCO.

SEC

36. CCPs registered and supervised by the SEC are known as Clearing Agencies (CAs). The Exchange Act established the regulatory framework for CAs. Section 17A established a system of SEC registration for CAs and includes general criteria that CAs must satisfy in order to be registered. There are currently nine CAs designated by the SEC.

37. The SEC oversees CAs primarily through its Division of Trading and Markets (Trading and Markets), Office of Compliance Inspections and Examinations (OCIE), and the Division of Enforcement (Enforcement). Trading and Markets administers and executes the SEC's programs relating to the structure and operations of the securities markets, which include regulation of clearing agencies and review of their proposed rule changes. OCIE examines CAs to assess the overall safety, reliability, and efficiency of the CA and their operations. OCIE also examines CAs for compliance with their own rules and applicable federal laws and regulations. Enforcement investigates and prosecutes violations of securities law.

Objectives

38. The objectives of the SEC supervisory program for CAs are:

    (1) Facilitate the establishment of a national system for the prompt and accurate clearance and settlement of securities transactions, including the transfer of record ownership and the safeguarding of securities and funds related thereto, are necessary for the protection of investors and persons facilitating transactions by, and acting on behalf of, investors;

    (2) alleviate inefficient procedures for clearance and settlement impose unnecessary costs on investors and persons facilitating transactions by, and acting on behalf of, investors;

    (3) promote new data processing and communications techniques that create the opportunity for more efficient, effective, and safe procedures for clearance and settlement; and

    (4) promote the linking of all clearance and settlement facilities and the development of uniform standards and procedures for clearance and settlement that will reduce unnecessary costs and increase the protection of investors and persons facilitating transactions by, and acting on behalf of, investors

Application Review

39. The SEC's oversight of CAs begins with a CA's application for registration, and continues following registration through a review of rule filings submitted to the SEC, examinations by the SEC, and periodic monitoring of the CA's risk management framework and operations. To register with the SEC, a CA must submit a Form CA-1, which includes pertinent information regarding the operations of the CA. When a Form CA-1 is filed, the SEC publishes notice of the filing in the Federal Register and then must either (1) grant the registration or (2) institute a proceeding to determine whether such application should be denied.

40. Section 17A of the Exchange Act specifically prescribes a list of standards, including those regarding a CA's organisation and capacity, and rules that a CA must comply with prior to having its application for registration granted. All registered CAs must comply with the standards in Section 17A, which include, but are not limited to, maintaining rules for promoting the prompt and accurate clearance and settlement of securities transactions; assuring the safeguarding of securities and funds which are in the custody or control of the CA or for which it is responsible; fostering cooperation and coordination with persons engaged in the clearance and settlement of securities transactions; removing impediments to, and perfecting the mechanism of a national system for, the prompt and accurate clearance and settlement of securities transactions; and, in general, protecting investors and the public interest. A registered CA is also required to provide fair access to clearing and to have the capacity to facilitate the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts, and transactions for which it is responsible, as well as to safeguard securities and funds in its custody or control or for which it is responsible.

41. When considering a request for registration, the SEC typically reviews and evaluates the rules, policies, and procedures of the CA for compliance with the Exchange Act. This review includes, as appropriate, an examination of proposed rules and supplementary information on membership standards; representation of CA members in the management and operations of the CA; and a review of information related to margin, financial resources, risk management, default management, liquidity, safeguarding of funds, and operational capacity.

42. After registering with the SEC, CAs are required under Section 19(b) of the Exchange Act to file with the SEC copies of any proposed rule or any proposed change in, addition to, or deletion from the CA's rules. The SEC reviews all proposed rule changes and publishes them for comment. Many

proposed rule changes are required to be approved by the SEC prior to going into effect; however, certain limited types of proposed rule changes may be immediately effective upon filing with the SEC (the SEC may suspend such rules and institute proceedings to determine whether such rules should be approved or disapproved). When reviewing a proposed rule change, the SEC considers the submissions of the CA and any comments received on the proposed change in making a determination of whether the proposed rule change is consistent with the requirements of the Exchange Act. Section 17A also gives the SEC authority to adopt rules for CAs as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act, and prohibits a registered CA from engaging in any activity in contravention of these rules and regulations. This rulemaking authority may be used by the SEC to provide appropriate standards concerning CA activities.

Examinations

43. The SEC's staff conducts examinations of CAs. As an initial step of the examination, the SEC staff assesses existing and emerging risks to identify areas for review. The review areas may include an examination of corporate governance, internal controls, membership, on-going member financial surveillance, clearing fund sizing, margin models, risk management systems, capitalization and liquidity, and other critical processes. SEC staff assesses the CA's compliance with applicable statutory and regulatory requirements and the CA's oversight of participant compliance with its rules.

44. The SEC staff also conducts regular inspections and examinations of CAs' compliance with the SEC's Automation Review Policy statements, which cover the technological infrastructure of trading systems and clearing agencies. These inspections focus on market systems capacity, vulnerability assessments, business continuity, and new software development, and specifically assess information technology governance, application controls, systems development methodology, information security, business continuity planning, systems capacity planning, computer operations, outsourcing, and internal audit functions of the CA.

45. SEC examination teams include staff with various expertise and skills. Exam teams will consult with others who have subject matter expertise within the agency, such as experts within the Division of Trading and Markets, and where appropriate such person may participate in the exam. Typically as part of the examination, the SEC staff will conduct a series of meetings with the CA at its facilities. SEC staff communicates extensively with the relevant CA, including senior management, and reviews documentation following the course of action described in the scope and plan document. As part of the examination process, SEC staff conducts testing.

46. After completing an examination, SEC staff compiles an examination summary letter that contains a description of the review, analysis, conclusions, and recommendations. SEC staff examination conclusions are communicated to the CA through an exit interview and through the issuance of an examination summary letter to the CA that outlines the conclusions. SEC staff expects the CAs to respond in writing and address all issues and conclusions identified in the course of the examination. Through its examinations, SEC staff works closely with the CA to ensure all findings are addressed in a timely manner.

On-going Monitoring

47. SEC staff participates in a variety of on-going monitoring reviews focused on governance and risk frameworks and processes. As part of this process, SEC staff reviews a CA's governance framework, which may include compliance processes; internal audit findings and resolution; board of directors interaction; and risk management framework, including new products/initiative review and approvals, margin methodology, back-testing and stress-testing procedures, risk monitoring practices, model governance practices, and the sizing and allocation of total financial resources.

Enforcement

48. Through the CA registration and rule filing process, as well as the subsequent monitoring and surveillance of the CA's structure, functions, and operations, the SEC is able to conduct thorough reviews, examinations, and monitoring of CAs to facilitate the establishment of a national system for the prompt and accurate clearance and settlement of securities transactions.

49. Pursuant to Section 21(a) of the Exchange Act, the SEC may initiate and conduct investigations to determine if there have been violations of the federal securities laws, including those specifically applicable to CAs, and the rules of the CA. Following an investigation, the SEC has the authority to institute civil actions seeking injunctive and other equitable remedies and/or administrative proceedings to, among other things, suspend or revoke registration; impose limitations upon a CA's activities, functions, or operations; or impose other sanctions, such as undertakings.

Systemically important financial market utilities

50. Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act gives the Financial Stability Oversight Council (the "Council")[3] the authority to designate certain CCPs as systemically important and therefore subject to heightened prudential standards and heightended supervision by the relevant supervisory agency (the CFTC or the SEC) and by the Board of Governors of the Federal Reserve System. The regime is intended for those CCPs (and settlement and payment systems) which are, or are likely to become, systemically important because the failure of or a disruption to the functioning of the CCP could create, or increase, the risk of significant liquidity or credit problems spreading among financial institutions or markets and thereby threaten the stability of the United States financial system.

51. On August 26 2011, a final rule of the Council entered into effect describing the criteria against which the Council will determine whether a CCP is systemically important, as well as the processes and procedures it will employ when designating a CCP as systemically important.

52. Section 813 of the Dodd-Frank Act requires the the Board of Governors of the Federal Reserve System, the CFTC and the SEC to jointly develop risk management supervision programs for CCPs designated as systemically important.

53. CCPs designated as systemically important are subject to additional examination and reporting requirements as well as heightened risk management standards to be developed by the CFTC, SEC and the Board of Governors of the Federal Reserve System, in consultation with the Council. These standards may address areas, such as:

    (1) Risk management policies and procedures;

[3] The Financial Stability Oversight Council has ten voting members:

1. Secretary of the Treasury (chairs the Council)
2. Chairman of the Federal Reserve
3. Comptroller of the Currency
4. Director of the Consumer Financial Protection Bureau
5. Chairperson of the U.S. Securities and Exchange Commission
6. Chairperson of the Federal Deposit Insurance Corporation
7. Chairperson of the Commodity Futures Trading Commission
8. Director of the Federal Housing Finance Agency
9. the Chairman of the National Credit Union Administration Board
10. An independent member (with insurance expertise), appointed by the President

(2) Margin and collateral requirements;

(3) Participant or counterparty default policies and procedures;

(4) Timely clearing and settlement of financial transactions, and

(5) Capital and financial resource requirements.

54. CCPs designated as systemically important are subject annual examinations of the financial and operationla risks that the CCP may present to financial institutions, critical markets, or the broader financial system. The examination will also assess the resources and capabilities of the CCP to monitor and amange its risks and the safety and soundness of its risk control and governance framework.

55. CCPs designated as systemically important are also subject to the Federal Deposit Insurance Corporation's (FDIC) resolution authority where they can be placed into receivership by the FDIC rather than reorganising or liquidating under the supervision of a bankruptcy court.

56. There are currently four CAs designated as systemically important financial market utilities (known as SIFMUs) and two DCOs designated as systemically important financial market utilities (known as SIDCOs).

ESMA's assessment

57. The supervisory and enforcement regimes on CCPs in Europe envisage the establishment of colleges for CCPs. This provision introduces a certain degree of harmonisation of the practices to be followed, e.g. need for a NCA to present a risk assessment to the college and the functioning of colleges will necessarily harmonise the supervisory practices among European NCAs.

58. EMIR introduces minimum standards of supervision and enforcement among NCAs, e.g. that CCPs should be subject to on-site inspections and that NCAs have the necessary powers to take effective, proportionate and dissuasive measures against CCPs, but EMIR leaves to the Member States the duty to define those measures at national level.

59. On the basis of ESMA experience in assessing common supervisory practices among European authorities, ESMA can conclude that these are not dissimilar to the one applicable in the US.

60. ESMA has also relied on independent assessments carried out by the International Monetary Fund through its Financial Sector Assessment Program (FSAP). The FSAP is an assessment of the supervisory regulations, arrangements and practices in a jurisdiction against the most relevant international standards in each field.

61. The last FSAP for the US was released in May 2010 and covers the assessment of IOSCO's objectives and principles of securities regulation (IMF Country Report No. 10/1254). It does not cover the CPSS-IOSCO Principles for Financial Market Infrastructures, since those principles were not yet established at that time.

62. Of the applicable IOSCO principles, all are considered either fully or broadly implemented, except for principles 1, 3 and 10 which are considered partly implemented (respectively, because of gaps

4 http://www.imf.org/external/pubs/ft/scr/2010/cr10125.pdf

on supervisory competences between the different supervisors, insufficiency of resources and some limitations in the SEC's enforcement programme).

63. With regards to the Principles relating to the regulator (Principles 1–5), the FSAP report concludes that:

- The responsibilities of the CFTC and SEC are clearly stated in law and that there are gaps in coverage of the wide range of activity in the U.S. markets and in the scope of authority of both agencies.
- There are differences between the futures and securities regimes in how similar instruments are regulated. There are also gaps between the authority of the SEC and the Federal Reserve with respect to the regulation and oversight of investment bank holding companies which added to the fragility of the overall system in the recent crisis. These gaps should be reduced as much as possible.
- The legal system grants the CFTC and SEC sufficient protection for their independence and the agencies operate independently on a day to day basis. There is a strong system of accountability to Congress.
- Neither agency has sufficient funding nor does the method of funding provide sufficient assurance of continuing funding levels to be able to commit to long-term capital projects, such as building new market surveillance systems, which are necessary to keep pace with changes in the industry. The CFTC and SEC activities and processes are transparent and there is public consultation regarding their regulations.
- They are active in investor education. CFTC and SEC staff and commissioners are subject to codes of ethics and other requirements to ensure a high standard of conduct.

64. With regards the principles relating to enforcement of securities regulation (Principles 8–10), the FSAP contains, among others, the following conclusions:

- The anti-fraud provisions under the U.S. federal securities laws, as enforced by the SEC via Rule 10b–53 and supported by the courts, have proved to be a very effective tool for prosecuting offences under the securities laws.
- The CFTC and SEC have broad investigative and surveillance powers over regulated entities, exchanges, and regulated trading systems. They can conduct on-site inspections without prior notice and can obtain information of all types without the need for a court order. The CFTC and SEC have broad enforcement powers, including the power to seek injunctions, bring an application for civil proceedings, and compel information and testimony from third parties. They also can impose administrative sanctions and refer matters to criminal authorities.
- The CFTC and SEC have implemented a system of supervision of markets and market participants including conducting on-site examinations. Significant shortcomings were identified in the SEC enforcement program. However, the SEC's extensive and wide-ranging program to implement the IG's recommendations and other changes is beginning to generate improvements and such efforts should be brought to a conclusion as a matter of high priority.

65. With respect to the principles for cooperation in regulation (principles 11–13), the FSAP report states that:

- The CFTC and SEC have broad authority to share information with both domestic and foreign regulators, even without having memoranda of understanding (MOUs) in place.
- Both agencies are signatories of the IOSCO MMOU and also have many bilateral MOUs in place

with other regulators.

- The CFTC and SEC have the authority to assist foreign regulators in obtaining information that is not in their files, using the powers that are available for their own investigative activities.

66. With regards to protection of professional secrecy, the IMF report assesses IOSCO Principle 5 (that requires that the staff of the Regulator should observe the highest professional standards, including appropriate standards of confidentiality) as "*Fully implemented" and concludes that "The CFTC and SEC have developed codes of ethics. These include investment limitations on staff and, in the case of the SEC, reporting obligations. There are mechanisms to monitor compliance.*"

67. The main findings in the FSAP report depict the implementation of the IOSCO principles of securities regulation.

68. **Against this background ESMA advises the Commission to consider that CCPs are subject to effective supervision and enforcement in the US**.

Part II – Effective equivalent system for the recognition of CCPs authorised under the legal regime of a third country

69. Section 5b of the CEA requires DCOs to register with the CFTC. However, subject to certain conditions, the CFTC may decide not to take enforcement action against a CCP that is required to register as a DCO but has not obtained such registration[5]. This is known as a 'no-action' letter. Such a letter concerns enforcement action only and does not represent a legal conclusion with respect to the applicability of any provision of the CEA or the CFTC's regulations.

70. Such letters are discretionary and the CFTC typically issues them where it considers that a relevant foreign jurisdiction provides an equivalent standard of regulatory supervision of the CCP concerned.

71. In the context of CCPs, the CFTC typically requires that CCPs authorised outside of the US apply for DCO registration in the US on the same basis as domestic CCPs. At present two CCPs authorised in the EU have been granted no-action letters, LCH.Clearnet SA and Eurex Clearing AG. However, these letters are time limited and the CCPs to which they apply will in time be required to obtain DCO registration.

72. The Exchange Act requires CAs to register with the SEC. On a similar basis as the CFTC, the SEC may decide not to take enforcement action against a CCP that is required to register as a CA but has not obtained such registration[6]. This is also known as a 'no-action' letter. However, as for the CFTC, the SEC typically requires that CCPs authorised outside of the US apply for CA registration in the US on the same basis as domestic CCPs.

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[5] Section 2(h)(1) of the Commodity Exchange Act, as added by Section 723(a)(3) of the Dodd-Frank Act provides that the CFTC may grant a conditional or unconditional exemption from DCO registration if the CFTC determines that the DCO is subject to "comparable, comprehensive supervision and regulation by the appropriate government authorities in its home country."

[6] Section 17(a)(k) of the Securities Exchange Act, as added by Section 763(b) of the Dodd-Frank Act provides that the SEC may grant a conditional or unconditional exemption from clearing agency registration if the SEC determines that the clearing agency is subject to "comparable, comprehensive supervision and regulation by… the appropriate government authorities in the home country of the clearing agency."

73. A system for the recognition of CCPs authorised under the legal regime of a third country therefore does exist from a technical and legal perspective in the US and in respect of both the CFTC and SEC. However this system is not generally used by US authorities on a long-term basis. Instead the CFTC and SEC require the registration of CCPs authorised outside of the US, thus subjecting them to the application of two sets of rules and to the direct jurisdiction of the SEC and CFTC.

74. **Against this background ESMA advises the Commission to consider the legal framework of the US as providing for an equivalent system for the recognition of CCPs authorised under third-country legal regimes. ESMA does however note that the US authorities do not use the equivalent system on a long-term basis and ESMA highlights to the Commission that in practice the US authorities require that CCPs authorised outside of the US become subject to the direct jurisdiction of the SEC and CFTC and the application of two sets of rules. ESMA notes that this represents a departure from the third country CCP regime prescribed in EMIR.**

Part III – Legally binding requirements which are equivalent to those of Title IV of EMIR

Jurisdictional level requirements

75. ESMA has undertaken a comparative analysis of the legally binding requirements which are applicable, at a jurisdictional level, to CCPs in the US under the CFTC (where CCPs are licenced as DCOs or have been designated as Systemically Important Derivatives Clearing Organisations (SIDCOs)) or the SEC (where CCPs are registered as CAs or have been designated as Systemically Important Financial Market Utilities (SIFMU)), and the corresponding legally binding requirements for CCPs under EMIR. The substantive analysis is set out in Annex III.

76. As set out in the detailed analysis included in Annex III, there are a number of areas where the legally binding requirements which are applicable, at a jurisdictional level, to CCPs in the US are not broadly equivalent to the legally binding requirements for CCPs under EMIR.

77. It should however be noted that ESMA's detailed analysis has been restricted to reviewing primary and secondary legislation, rules and regulations promulgated under primary and secondary legislation and legally binding documentation issued by the CFTC and the SEC. This is in line with the mandate given to ESMA by the European Commission.

Other legal and supervisory arrangements

78. In addition to the legally binding requirements which are applicable at a jurisdictional level, to CCPs in the US, ESMA is aware that some CCPs authorised in the US might, on an individual basis, have adopted (or may in future adopt) internal policies, procedures, rules, models and methodologies which have the effect of subjecting the CCP to standards that are broadly equivalent to the legally binding requirements for CCPs under EMIR. The internal policies, procedures, rules, models and methodologies that some CCPs authorised in the US might, on an individual basis, have adopted, could constitute legally binding requirements for the purposes of Article 25(6) of EMIR where, (a) such internal policies, procedures, rules, models and methodologies cannot be changed without the approval or non-objection of the CFTC and/or the SEC (as relevant) and (b) any departure by

the CCP from, or failure to implement, such internal policies, procedures, rules, models and methodologies can give rise to possible enforcement action.

79. ESMA considers that where such internal policies, procedures, rules, models and methodologies do constitute legally binding requirements in accordance with the tests set out in paragraph above, then these should also be taken into account. This solution should avoid any market disruption which might occur in the absence of a recognition regime for US CCPs.

80. **Taking into account the legally binding requirements which are applicable, at a jurisdictional level, to CCPs in the US and the other legal and supervisory arrangements present in the US, ESMA advises the Commission to consider that CCPs authorised in the US do comply with legally binding requirements which are equivalent to the requirements laid down in Title IV of EMIR, where such CCPs have adopted internal policies, procedures, rules, models and methodologies that constitute legally binding requirements in accordance with the tests set out in paragraph 78 above and where they incorporate provisions which, on a holistic basis, are broadly equivalent to the legally binding requirements for CCPs under EMIR (i.e. where the internal policies, procedures, rules, models and methodologies include provisions which, on a holistic basis, address the gaps identified in the relevant section of the detailed analysis set out at Annex III) in the following areas:**

<u>CCPs under the CFTC's DCO regime</u>

(1) **Risk Committee requirements.**

(2) **Business continuity requirements.**

(3) **Margin requirements.**

(4) **Default fund requirements.**

(5) **Other financial resources requirements.**

(6) **Liquidity risk control requirements.**

(7) **Default waterfall requirements.**

(8) **Collateral requirements.**

(9) **Investment policy requirements.**

(10) **Review of models, stress testing and back testing requirements.**

<u>CCPs under the SEC regime</u>

(1) **Risk Committee requirements.**

(2) **Business continuity requirements.**

(3) **Outsourcing requirements.**

(4) **Segregation and portability requirements.**

(5) **Margin requirements.**

(6) **Default fund requirements *(except for CAs clearing SBS)*.**

(7) **Other financial resources requirements *(except for CAs clearing SBS)*.**

(8) **Liquidity risk control requirements.**

(9) **Default waterfall requirements.**

(10) **Collateral requirements.**

(11) **Investment policy requirements.**

(12) **Default procedure requirements.**

(13) **Review of models, stress testing and back testing requirements.**

CCPs under the CFTC's regime for SIDCOs and Opt-In DCOs

(1) **Risk Committee requirements.**

(2) **Margin requirements.**

(3) **Default fund requirements.**

(4) **Other financial resources requirements *(except when systemically important in multiple jurisdictions or involved in activities with a more complex risk profile)*.**

(5) **Default waterfall requirements.**

(6) **Collateral requirements.**

(7) **Investment policy requirements.**

(8) **Review of models, stress testing and back testing requirements.**

81. **In order to achieve the fundamental objectives that an equivalence assessment under EMIR should look at in respect of CCPs (i.e. the avoidance of risk importation to the EU, the protection of EU entities and investors and the prevention of regulatory arbitrage), the solution proposed in this draft advice requires that a CCP applying for recognition under EMIR has adopted internal policies, procedures, rules, models and methodologies that address the differences identified in the final column of the table at Annex III for the areas highlighted above.**

Conclusion on CCPs

82. **ESMA advises the Commission to consider that CCPs authorised in the US are subject to effective supervision and enforcement on an on-going basis and that the legal framework of the US provides for an effective equivalent system for the recognition of CCPs authorised under third-country legal regimes. Although ESMA does note that the US authorities do not use the equivalent system on a long-term basis and ESMA highlights to the Commission that in practice the US authorities require that CCPs authorised outside of the US become subject to the direct jurisdiction of the SEC and**

CFTC and the application of two sets of rules. ESMA notes that this represents a departure from the third country CCP regime prescribed in EMIR.

83. **ESMA also advises the Commission to consider that the legal and supervisory arrangements of the US ensure that CCPs authorised in the US comply with legally binding requirements which are equivalent to the requirements laid down in Title IV of EMIR in respect of CCPs that have adopted internal policies, procedures, rules, models and methodologies that constitute legally binding requirements in accordance with the tests set out in paragraph 78 above and where they incorporate provisions which, on a holisitic basis, are broadly equivalent to the legally binding requirements for CCPs under EMIR in the areas set out in paragraph 80 above.**

84. **On this basis, ESMA would only grant recognition to CCPs authorised in the US which have in fact adopted internal policies, procedures, rules, models and methodologies which, on a holistic basis, incorporate provisions that are broadly equivalent to the legally binding requirements for CCPs under EMIR in the specific areas identified above and where ESMA has assessed that the relevant internal policies, procedures, rules, models or methodology do constitute legally binding requirements in accordance with the tests set out in paragraph 78 above.**

85. **If a CCP authorised in the US that was granted recognition by ESMA subsequently made changes to its internal policies, procedures, rules, models and methodologies in a way which meant that the CCP no longer complied with standards that were broadly equivalent to the legally binding requirements for CCPs under EMIR, then that CCP would no longer qualify for recognition, and would be subject to the withdrawal of its recognition pursuant to Article 25(5) of EMIR.**

86. ESMA is aware that the SEC and CFTC are currently in the processes of developing further legally-binding requirements which will be applicable, at a jurisdictional level, to CCPs in the US. Should the Commission require further technical advice following the future promulgation of these requirements then ESMA stands ready to assist.

Section III. Technical advice on TRs

Part I – Legal, supervisory and enforcement arrangements

87. In its mandate, the Commission requested ESMA to provide technical advice on the legal and supervisory regime in the US and to advise whether the legal, supervisory and enforcement arrangements in the US are equivalent to the reporting obligation as laid down in EMIR and ensure that (i) trade repositories authorised in the US comply with legally binding requirements equivalent to the relevant requirements laid down in EMIR, (ii) US trade repositories are subject to effective on-going supervision and enforcement; and (iii) guarantees of professional secrecy exist at least equivalent to those set out in EMIR.

Legally binding requirements

88. Having assessed the several matters pertaining to reporting to trade repositories registration and supervision of trade repositories, and to access to trade repositories' data and professional secrecy, ESMA finds that the US rules are equivalent or broadly equivalent to the EU rules on a number of issues, as identified in Annex IV. In particular, the general requirements for the provision of TR services, the TR organisational requirements, the general reporting requirements and the requirements related to the confidentiality and the protection of data are considered equivalent or broadly equivalent.

89. However, it must be noted that:

    1) most of the SEC rules related to TRs are still not final; and
    2) certain differences exist as highlighted in Annex IV. In particular differences have been identified on the following:
        a) The operational separation of ancillary services;
        b) The details to be reported to TRs, in particular the absence of specific data on valuation of exposures and collateralisation of such exposures;
        c) The scope of the collected data (OTC derivatives only, apart from exchange-traded swaps);
        d) The restrictions on foreign authorities' access to TR data.

90. The operational separation of ancillary services is considered an important requirement the absence of which might have a significant impact on the safety and stability of the TRs and on their business conduct. However, in line with the solution proposed for CCPs, ESMA considers that TRs internal policies, procedures and rules constitute legally binding requirements for the purposes of Article 75(1) of EMIR where, (a) such internal policies, procedures and rules cannot be changed without the approval or non-objection of the CFTC and/or the SEC (as relevant) and (b) any departure by the TR from, or failure to implement, such internal policies, procedures and rules can give rise to possible enforcement action. Therefore, legally binding internal policies, procedures and rules that ensure operational separation should be taken into account under the recognition assessment.

91. The details to be reported to TRs are an essential component of the use of TRs' data for regulatory purposes. The absence of daily data on the valuation of all contracts for all counterparties and on collateral on a trade level or portfolio basis (and not a collateralised / uncollateralised flag) will impede the determination of the effective value of the exposures resulting from OTC derivatives contracts. This information is considered essential to monitor counterparty credit risk and possible systemic risk. In this respect it should be noted that:

    (1) Where one regime (EU) requires certain information to be reported and a second regime (US) does not, the reporting obligation under EMIR cannot be substituted with the reporting obli-

gation under the US regime. Therefore, under Article 13(2) of EMIR, the US legal, supervisory and enforcement arrangements should not be considered equivalent to the requirements laid down in Article 9 of EMIR;

(2) Where TRs adopts legally binding internal policies, procedures, rules, models and methodologies that ensure the collection of data on exposures (valuation and collateral), these should be taken into account under the recognition assessment.

92. The difference in scope (OTC derivatives only for the US, apart from exchange traded swaps, and all derivatives for the EU) is not considered a significant difference. Even though there is no legal rule in EMIR specifying that TRs are forced to collect all transactions in a particular asset class once they are authorised for the collection of reports in that asset class, Article 78(7) EMIR provides that TRs shall have non-discriminatory requirements for access by reporting parties. It derives from this provision that TRs should not discriminate between reporting parties within an asset class, for example on the basis of whether the derivative to be reported is an OTC or Exchange Traded Derivatives (ETD) one. Nonetheless, having said that, some TRs might specialise in OTC derivatives reporting, while remaining available to report ETDs (and vice versa) if requested to do so by a reporting party. Therefore, in the EU it cannot be excluded the existence of TRs that in practice only collect OTC derivatives transactions. For this reason and assuming that US TRs would respect the non-discriminatory provision described above, which also applies under the US regime, the difference in scope should not be considered a major obstacle for the determination of an equivalence assessment.

93. Restrictions on access to TR data by foreign regulators represent a major obstacle for the use of US TRs for regulatory purposes. The CFTC has clarified[7] that indemnification provisions would not apply to data reported to US trade repositories recognised under a foreign regime for which the foreign authority has a legitimate interest. However, it should be noted that: 1) this interpretation of the CFTC is not of a legally binding nature, so European regulators could always be exposed in a court of law for breaches of indemnification provisions; and 2) such interpretation is restricted to a limited set of data and not to all the data maintained by the trade repository which is necessary for the performance of the statutory duties of the foreign authority. Furthermore, the SEC has recently addressed the indemnification issue in their consultation on the cross-border security-based swap activity[8], finding a possible way to overcome the issues arising from such a provision.

94. It should be noted, however, that issues related to mutual access to TRs' data need to be solved by an international agreement to be signed by the European Union and the relevant third country jurisdiction, where appropriate. Given that the expected signature of this international agreement is a necessary condition for granting recognition to third country TRs, it is considered that issues related to data accessibility by foreign regulators should not impact the equivalence assessment.

95. Against this background ESMA advises the Commission to consider that TRs authorised in the US do comply with legally binding requirements which are equivalent to the requirements laid down in EMIR, where such TRs have adopted internal policies, procedures and rules that constitute legally binding requirements in accordance with the tests set out in paragraph 90 above and where they incorporate provisions which are broadly equivalent to the legally binding requirements for TRs under EMIR in the following areas:

(1) Operational separation; and

[7] See CFTC final interpretative guidance on indemnification and confidentiality obligations of foreign regulators: http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/federalregister102212.pdf

[8] See SEC consultation on cross border security-based swap activity: http://www.sec.gov/rules/proposed/2013/34-69490.pdf

(2) Collection of data on exposures (valuation and collateral).

96. On this basis, ESMA would only grant recognition to TRs authorised in the US which have in fact adopted internal policies, procedures and rules which incorporate provisions that are broadly equivalent to the legally binding requirements for TRs under EMIR in the specific areas identified above and where ESMA has assessed that the relevant internal policies, procedures and rules do constitute legally binding requirements in accordance with the tests set out in paragraph 90 above.

97. ESMA also advises the Commission to consider the US legal, supervisory and enforcement arrangements not equivalent to the requirements laid down in Article 9 of EMIR for the purpose of Article 13 of EMIR.

Guarantees of professional secrecy

98. With regards to protection of professional secrecy, the latest IMF report under the FSAP assessment of the US (2010), as recalled by the the latest FSB Peer Review of the United States (2013)[9], assesses IOSCO Principle of Securities Regulation 5, that requires that the staff of the Regulator should observe the highest professional standards, including appropriate standards of confidentiality and concludes that "*The CFTC and SEC have developed codes of ethics. These include investment limitations on staff and, in the case of the SEC, reporting obligations. There are mechanisms to monitor compliance.*" The main findings in the FSAP report depict the implementation of the IOSCO principles of securities regulation.

99. CFTC is deemed to ensure compliance with applicable laws, such as the Privacy Act of 1974, and privacy provisions of the E-Government Act of 2002, Commodity Exchange Act, and Federal Information Security Management Act. Under the CEA § 140.735-5 on Disclosure of information specific rules apply, as described in the annexed tables[10].

100. In particular the section §140.23 of the CFR (following the Commodities Exchange Act) ensures confidentiality of data specifically held by CFTC, containing specific rules on access to that data, as further detailed in the annexed tables[11].

101. As regards the SEC, their Rules and Regulations (§ 200.735-3 CFR) for instance also provide for similar rules, as further described in the annexed tables.[12].

102. Additionally, the U.S. Privacy Act covers information pertaining to individuals held by US agencies in a system of records maintained by the agency and the US Freedom of Information Act (FOIA), a means through which individuals may obtain disclosure of certain information held by US agencies, thereby providing transparency into US agency activity. With respect to permitted disclosures, EMIR and the Privacy Act both contain exceptions providing for disclosure, including in connection with certain legal proceedings, for routine official uses, or with consent. Conversely, FOIA contains exceptions to disclosure, only protecting certain information held by agencies, including trade secrets or privileged or confidential commercial or financial information as well as information that if disclosed would constitute a clearly unwarranted invasion of personal privacy.

[9] http:/www.financialstabilityboard.org/publications/r_130827.htm
[10] http://www.gpo.gov/fdsys/pkg/CFR-2004-title17-vol1/xml/CFR-2004-title17-vol1-sec140-735-5.xml
[11] http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=95433e1d78f90bbb23d284d1888c5744&rgn=div8&view=text&node=17:1.0.1.1.44.2.7.9&idno=17
[12] http://www.gpo.gov/fdsys/pkg/CFR-2012-title17-vol2/xml/CFR-2012-title17-vol2-sec200-735-3.xml

103. ESMA finds the provisions related to the guarantee of professional secrecy compatible with the objectives and results regarding data protection and advises the European Commission to consider equivalence in this respect.

Effective on-going supervision and enforcement

104. Annex VI analyses the different supervisory powers assigned to ESMA under EMIR and following the descriptions and comparison of these powers with the US regime it concludes that the following measures are equivalent to the general powers assigned to the SEC under the Exchange Act or the CFTC under the CEA:

(3) Investigation powers;

(4) Inspections;

(5) Supervisory measures and penalties;

(6) Sanctions, fines and periodic penalty payments;

(7) Withdrawal of registration.

105. Although there are no specific provisions related to TRs, the general provisions applicable to all regulated firms apply. Therefore, in line with the conclusions on the general supervisory regime for the US highlighted in Part I, ESMA advises the Commission to consider equivalence of the EU and US supervisory and enforcement arrangements for TRs.

Conclusion on TRs

106. **ESMA advises the Commission to consider that TRs authorised in the US do comply with legally binding requirements which are equivalent to the requirements laid down in EMIR, where such TRs have adopted internal policies, procedures, rules, models and methodologies that constitute legally binding requirements in accordance with the tests set out in paragraph 90 above and where they incorporate provisions which are broadly equivalent to the legally binding requirements for TRs under EMIR in the following areas:**

(1) **Operational separation;**

(2) **Collection of data on valuation and collateral.**

107. **ESMA advises the Commission to consider the US legal, supervisory and enforcement arrangements not equivalent to the requirements laid down in Article 9 of EMIR for the purpose of Article 13 of EMIR.**

108. **ESMA advises the Commission to consider the effective supervision and enforcement of trade repositories and the guarantees of professional secrecy equivalent to the EU regime.**

Section IV. Technical advice on potential duplicative or conflicting requirements

Part I – Mechanism to avoid potential duplicative or conflicting requirements

Clearing obligation

109. As demonstrated in the detailed analysis included in Annex VII, both the EU and the US have a clearing obligation that applies to a wide variety of market participants. Both the EU and the US have similar procedures for determining the clearing obligation (bottom-up and top-down approach). Both the EU and the CFTC (not yet known for the SEC) allow for both direct and indirect clearing for the purpose of complying with the clearing obligation. Both the EU and the US allow the relevant contract to be cleared in an authorised or recognised/exempted CCP. Both the EU and the US apply the clearing obligation to contracts concluded after the clearing obligation process has started or concluded (no backloading).

110. As for the scope of application many differences apply to the entities subject to the obligation and to the exemptions. The scope of products (the contracts subject to the clearing obligation are still to be determined).The differences are both in the EU and the US regime and it is not possible to determine which regime is more inclusive or stringent. However, following bilateral and multilateral discussions with the CFTC and the SEC, there is a common understanding that the strictest rule would apply in such case. In a situation where an EU counterparty would be subject to the clearing obligation whereas its US counterparty would benefit from an exemption with no equivalence in the EU (i.e. if established in the EU, the US counterparty would have no exemption), the clearing obligation resulting from EU rules would apply and counterparties would have to clear. In the same way, an exempted EU counterparty would clear with its US counterparty subject to the clearing obligation if the exemption has no equivalence in the US. However, if there is an equivalent exemption in the jurisdiction of the counterparty, the exemption would apply and clearing would not be required.

111. This has led ESMA to conclude that the EU and the US regimes, for the purpose of the clearing obligation, are broadly equivalent. However, given the possible difference in the product scope (the contracts subject to the clearing obligation are still to be determined) and in the personal scope, and considering the common understanding that the strictest rule would apply, ESMA advises the Commission to grant an equivalence that would allow the disapplication of Article 4 of EMIR, only if the following conditions are respected:

a) The product subject to the clearing obligation in the EU is also subject to the clearing obligation in the US;
b) The entity in the US is a non-exempted entity, or if exempted it would benefit from an equivalent exemption if established in the EU.

These conditions would allow avoiding loopholes or evasions through the disapplication of EMIR and application of an equivalent regime. Indeed the strictest rule principle would require that both the products and the persons subject to the clearing obligation coincide in the two regimes. If the US regime does not require that a product or a person subject to the clearing obligation in the EU is also subject to the clearing obligation in the US, then EMIR cannot be disapplied and substituted with the US rule, as the latter would no longer be equivalent. Therefore, these conditions would implement the strictest rule principle for the clearing obligation under Article 13 of EMIR.

112. With reference to the intragroup transactions, in view of the establishment of an equivalent regime for the clearing obligation and for risk mitigation techniques (a substantial part of it related to bilateral margins is still to be determined – see below), ESMA advises the Commission to allow transactions between European and US entities of the same group to benefit from the intragroup exemption.

Timely confirmation

113. As outlined in Annex VII, the rules on timely confirmation apply in the US only to Swap Dealers (SDs), Securities Based Swap Dealers (SBSDs), Major Swaps Participants (MSPs) and Major Securities Based Swaps Participants (MSBSPs). MSBSP will encompass some non-financial counterparties that have a significant activity in derivatives. In the EU, the timely confirmation applies to financials and non financials irrespective of whether they exceed the clearing threshold or not. Only the timing will differ between non-financials that exceed the clearing threshold and those that do not. The personal scope of application of the EU rules related to timely confirmation is therefore broader than in the US.

114. CFTC rules applicable to SDs and MSPs are similar both in terms of content, timing, phasing-in and delegation to the ones applicable in the EU to Financial and Non-Financial Counterparties above the clearing threshold (NFC+) or Non-Financial Counterparties below the clearing threshold (NFC-).

115. The SEC has not finalised its rules. The proposed rule does not specify a time in which SBSDs or MSBSPs must verify or affirm their transactions but requires that they verify the accuracy of the trade acknowledgment "promptly". We consider that this is slightly less strict than the European approach. However, ESMA recommends that the Commission revisit the relevant rules once finalised.

116. Nothwithstanding rules on reporting to trade repositories, with reference to the reporting of unconfirmed trades to competent authorities, a gap has been identified, i.e. no corresponding requirement exists in the US. It is worth to note that each Swap Dealer and Major Swap Participant is subject to a record-keeping[13] requirement, allowing the CFTC to request information on confirmation.

117. Against this background, ESMA advises the Commission to grant equivalence and allow for the disapplication of EMIR for the purpose of Article 11(1)(a) of EMIR only if the following conditions are respected:

a) The relevant transaction is executed between a European counterparty and a SD or MSP subject to the CFTC jurisdiction;
b) Reporting of unconfirmed trades to European competent authorities is not disapplied.

[13] § 23.202(a) (3) (ii)" (ii) Each swap dealer and major swap participant shall make and keep a record of all swap confirmations, along with the date and time, to the nearest minute, using Coordinated Universal Time (UTC), by timestamp or other timing device;"

Portfolio reconciliation

118. The rules on portfolio reconciliation in the EU and in the US are quite similar in terms of content and frequency, to the extent that in the US the CFTC rules applicable to transactions between SDs and MSPs are considered.

119. The SEC has not finalised or proposed direct rules in this respect. The SEC relies on other proposed rules to fulfil the Dodd-Frank statute's requirements. The proposed rule 15Fi-1 would prescribe standards related to timely and accurate confirmation and documentation of SBS, specifically to provide prompt verification of the terms provided in a trade acknowledgment in transactions between SBSDs/MSBSPs and to maintain policies and procedures reasonably designed to obtain prompt verification of the terms of a trade acknowledgment for other transactions (i.e., in transactions between an SBSD/MSBSP and a non-registrant). Under proposed SBSDR rule 13n-5(b)(1)(iv), SB SDRs would be required, to promptly record transaction data and confirm accuracy of data with counterparties. The SEC regime would include requirements that would not be equivalent to those of EMIR should the proposed rules be adopted.

120. ESMA, therefore, advises the Commission to grant equivalence which would allow for the disapplication of the portfolio reconciliation obligation under Article 11(1)(b) of EMIR if the following conditions are respected:

a) Where the transaction is between a financial or a NFC+ and a SD or MSP, the SD or MSP apply the provisions applicable to transactions between SDs and MSPs;
b) Where the transaction is between a NFC- and a SD or MSP, the SD or MSP apply the provisions applicable to transactions to counterparties other than SD or MSP.

121. However, given that both the EU and US requirements can be met at the same time without duplications, conflicts or overlaps, there is a very little case for the disapplication of EMIR.

Portfolio compression

122. As highlighted in Annex VI, the scope of application of the portfolio compression provisions are broader in the EU but are comparable to the CFTC rules applicable to SDs and MSPs. To this extent, ESMA advises the Commission to grant an equivalent assessment in this respect and allow for the disapplication of the EMIR provisions on portfolio compression, where the entity subject to the requirement in the EU enters into transactions with a SD or an MSP subject to the CFTC regime.

Dispute resolution

123. As outlined in Annex VI, the CFTC rules specify that a difference between the lower valuation and the higher valuation of less than 10 percent of the higher valuation need not be deemed a discrepancy that must be resolved through dispute resolution, whereas the EU rules contain no de minimis exception.

124. The CFTC rules require discrepancies in swaps between SDs and MSPs to be resolved within five business days and discrepancies in material terms between such counterparties to be resolved "immediately". Resolution of discrepancies involving material terms of swaps or valuations between SDs/MSPs and counterparties that are not SDs/MSPs must be resolved in a timely fashion. The EU Rules require that disputes are resolved in a timely manner regardless of the type of coun-

terparties and that such counterparties have in place a specific process for disputes not resolved within five business days.

125. As it is the case for all obligations under the risk mitigation techniques section of EMIR, the scope in the EU is broader given that it applies to financial and NFC, whereas in the US it is only limited to SDs and MSPs.

126. Finally, with reference to the reporting of disputes, although the EU and CFTC requirements are consistent, it is not advisable to grant equivalence and disapply reporting requirements, otherwise the European National Competent Authorities would risk losing an important source of information.

127. Against this background, neither the EU nor the CFTC regime is more stringent and the disapplication of the EU regime might lead to a lower standard depending on the situations. In addition, the non-disapplication of the European regime would not prevent transactions between European and US firms to take place, although subject to different dispute resolution regimes. For this reason ESMA advises the Commission not to grant equivalence to the US with respect to dispute resolutions.

Bilateral margins and capital

128. The details of the rules on bilateral margins and capital will be defined in the EU through joint technical standards to be developed by the ESAs. The development of these regulatory technical standards is on-going.

129. ESMA advises the Commission to suspend a decision on equivalence of EU and US rules with respect to bilateral margins and capital until the relevant EU and US rules are finalised.

Non-financial counterparties

130. The analysis in Annex VII shows the different application of the regimes for NFC. With reference to the clearing obligation the scope of application of the US regime is generally broader as it does not allow for thresholds, but only for the exclusion of hedging transactions. However, in the EU, once the threshold is crossed, all OTC derivatives transactions (both hedging and non-hedging) executed following the relevant date of the crossing of the threshold (considering the 30 days rolling average) are subject to the clearing obligation.

131. With reference to risk mitigation techniques, the application to NFC+ and NFC- depends on the different provisions.

132. Against this background, ESMA advises the Commission not to take a specific determination of equivalence on NFC, but to analyse the application of the different provisions also with respect to NFC, as suggested in the sections above.

Protection of professional secrecy

133. ESMA understands the reference to professional secrecy in Article 13(2)(b) of EMIR as relevant for the purpose of the reporting obligation under Article 9 of EMIR and not particularly relevant for the disapplication of Article 4 and 11 of EMIR.

134. ESMA, therefore, considers that the analysis already included under the TR section on professional secrecy would cover the reference to it under Article 13 of EMIR.

Effective supervisory and enforcement arrangements

135. As highlighted in Annex VIII, the supervisory and enforcement regimes with respect to OTC derivatives are not harmonised in Europe. However, EMIR requires the Member States to put in place effective, proportionate and dissuasive measures for the enforcement of the provisions related to the clearing obligation and risk mitigation techniques.

136. The detailed measures applicable in the US for breaches of the clearing obligation and risk mitigation techniques reported in Annex VIII are considered by ESMA as effective, proportionate and dissuasive. In line with the conclusions on the general supervisory regime for the US highlighted in Part I, ESMA advises the Commission to grant equivalence to the US in respect of the effective supervisory and enforcement arrangements.

Conclusion on mechanism to avoid potential duplicative or conflicting requirements

137. **With respect to the implementing act on equivalence to be adopted by the Commission under Article 13(2) of EMIR for the US regime, ESMA advises the Commission as follows:**

(1) **The regime for the clearing obligation includes legally binding requirements that are equivalent to those of EMIR under the conditions highlighted above;**
(2) **The regime for the Timely confirmation includes legally binding requirements that are equivalent to those of EMIR under the conditions highlighted above;**
(3) **The regime for the Portfolio reconciliation includes legally binding requirements that are equivalent to those of EMIR under the conditions highlighted above;**
(4) **The regime for the Portfolio compression includes legally binding requirements that are equivalent to those of EMIR under the conditions highlighted above;**
(5) **The regime for the Dispute resolution is not equivalent to that of EMIR;**
(6) **The regime for the Bilateral margins and capital cannot be assessed and a decision on equivalence should be postponed;**
(7) **The regime for the Effective supervisory and enforcement arrangements includes legally binding requirements that are broadly equivalent to those of EMIR.**

ANNEX I – Mandate from the European Commission

FORMAL REQUEST TO ESMA FOR TECHNICAL ADVICE ON POSSIBLE IMPLEMENTING ACTS CONCERNING REGULATION 648/2012 ON OTC DERIVATIVES, CENTRAL COUNTERPARTIES AND TRADE REPOSITORIES (EMIR)

With this formal mandate the Commission seeks ESMA's technical advice to prepare possible implementing acts concerning the **equivalence** between the legal and supervisory frameworks of certain third countries and Regulation No 648/2012 of 4 July 2012 on OTC derivatives, central counterparties and trade repositories ('EMIR' or the "**legislative act**"). Any such implementing acts that may be proposed by the Commission must be adopted in accordance with Article 291 of the Treaty on the Functioning of the European Union (TFEU).

The Commission reserves the right to revise and/or supplement this formal mandate and revise the timetable if the scope is amended. The technical advice received on the basis of this mandate should not prejudge the Commission's final decision.

This mandate is based on Regulation No 1095/2010 of the European Parliament and the Council of 24 November 2010 establishing a European Securities and Markets Authority (the "**ESMA Regulation**")[14] and Regulation (EU) No 182/2011 of the European Parliament and the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers[15].

According to Articles 25(6) and 75(1) of the legislative act the Commission may adopt an implementing act determining that the legal and supervisory arrangements of a third country ensure that CCP's and trade repositories, which are respectively established or authorized in a specific third country comply with legally binding requirements which are equivalent to the requirements laid down in EMIR. Furthermore, according to Article 13(2) of the legislative act, the Commission may also adopt implementing acts declaring that the legal, supervisory and enforcement arrangements of a third country are equivalent to the clearing and reporting requirements laid down in EMIR (Articles 4,9,10 and 11) to avoid duplicative or conflicting rules.

***

The European Parliament and the Council shall be duly informed about this mandate.

In accordance with the established practice within the European Securities Committee,[16] the Commission will continue, as appropriate, to consult experts appointed by the Member States in the preparation of these possible implementing acts.

The powers of the Commission to adopt implementing acts are subject to Articles 13(2), 25(6) and 75(1) of the Legislative act. As soon as the Commission adopts an implementing act, the Commission will notify it simultaneously to the European Parliament and the Council.

[14] OJ L 331, 15.12.2010, p. 84 - 119.
[15] OJ L55/13, 28.2.2011, p. 13-18
[16] Commission's Decision of 6.6.2001 establishing the European Securities Committee, OJ L191, 17.7.2001, p.45-46.

1. Context.

1.1 Scope.

CCPs

ESMA may recognise a *CCP* established in a third country under certain conditions. According to Article 25 (2a) EMIR one of those conditions is that the Commission has adopted an implementing act in accordance with Article 25 (6) EMIR determining that the legal and supervisory regime in the country in which the CCP is established ensure that CCPs established there comply with legally binding requirements which are equivalent to those of Title IV of EMIR, that those CCPs are subject to effective on-going supervision and enforcement in the third country, and that its legal framework provides for an effective equivalent system for the recognition of CCPs authorised under the legal regime of a third country.

Trade repositories

Trade repositories established in a third country that intend to provide services and activities must be recognized by ESMA. Such recognition also requires an implementing act of the Commission under Article 75(1) of EMIR determining that the legal and supervisory regime in the country in which the trade repository is established ensure that trade repositories authorised there comply with legally binding requirements which are equivalent to those of EMIR, that those trade repositories are subject to effective on-going supervision and enforcement in the third country, and guarantees of professional secrecy exist that are at least equivalent to those of EMIR.

Potential duplicative or conflicting requirements on market participants

In accordance with Article 13(1) EMIR, the Commission, assisted by ESMA, must monitor, prepare reports and recommend possible action to the European Parliament and the Council on the international application of the clearing and reporting obligations, the treatment of non-financial undertakings and the risk mitigation techniques for OTC trades that are not cleared by a CCP, in particular with regard to potential duplicative or conflicting requirements on market *participant*s.

The Commission may adopt implementing acts declaring that the legal, supervisory and enforcement arrangements of a third country are equivalent to the respective requirements in EMIR, ensure an equivalent protection of professional secrecy, and are being applied in an equitable and non-distortive manner so as to ensure effective supervision and enforcement in that third country. An implementing act adopted by the Commission declaring that the abovementioned conditions have been fulfilled for a third country shall imply, according to Article 13(3), that if at least one of the counterparties entering into an OTC derivatives transaction is established in that third country and the contract is subject to EMIR, the counterparties will be deemed to have fulfilled the requirements of EMIR.

1.2 Principles that ESMA should take into account.

In providing its technical advice ESMA is invited to take account of the following principles:

- It should respect the requirements of the ESMA Regulation, and, to the extent that ESMA takes over the tasks of CESR in accordance with Art 8(1)(l) of the ESMA Regulation, take account of the principles set out in the Lamfalussy Report[17] and those mentioned in the Stockholm Resolution of 23 March 2001[18].

- The principle of proportionality: the technical advice should not go beyond what is necessary to achieve the objective of the implementing acts set out in the legislative act.

- While preparing its advice, ESMA should seek coherence within the regulatory framework of the Union.

- In accordance with the ESMA Regulation, ESMA should not feel confined in its reflection to elements that it considers should be addressed by the implementing acts but, if it finds it appropriate, it may indicate guidelines and recommendations that it believes should accompany the delegated acts to better ensure their effectiveness.

- ESMA will determine its own working methods depending on the content of the provisions being dealt with. Nevertheless, horizontal questions should be dealt with in such a way as to ensure coherence between different standards of work being carried out by the various expert groups.

- ESMA should provide comprehensive technical analysis on the subject matters described below covered by the delegated powers included in the relevant provision of the legislative act and its corresponding recitals as well as in the relevant Commission's request included in this mandate.

- The technical advice given by ESMA to the Commission should not take the form of a legal text. However, ESMA should provide the Commission with an "articulated" text which means a clear and structured text, accompanied by sufficient and detailed explanations for the advice given, and which is presented in an easily understandable language respecting current terminology in the Union.

- ESMA should address to the Commission any question they might have concerning the clarification on the text of the legislative act, which they should consider of relevance to the preparation of its technical advice.

2 Procedure.

The Commission is requesting the technical advice of ESMA in view of the preparation of the possible implementing acts to be adopted pursuant to the legislative act and in particular regarding the questions referred to in section 3 of this formal mandate.

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[17] Final Report of the Committee of Wise Men on the Regulation of European Securities Markets, chaired by M. Lamfalussy, Brussels, 15 February 2001. (http://ec.europa.eu/internal_market/securities/docs/lamfalussy/wisemen/final-report-wise-men_en.pdf)

[18] Results of the Council of Economics and Finance Ministers, 22 March 2001, Stockholm Securities legislation, (http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/01/105&format=HTML&aged=0&language=EN&guiLanguage=en).

The mandate takes into account the ESMA Regulation and Regulation (EU) No 182/2011 of the European Parliament and the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers.

The Commission reserves the right to revise and/or supplement this formal mandate and revise the timetable if the scope is amended. The technical advice received on the basis of this mandate will not prejudge the Commission's final decision in any way.

In accordance with established practice, the Commission may continue to consult experts appointed by the Member States in the preparation of the implementing acts relating to the legislative act.

The Commission has duly informed the European Parliament and the Council about this mandate. As soon as the Commission adopts possible delegated acts, it will notify them simultaneously to the European Parliament and the Council.

3 ESMA is invited to provide technical advice on the following issues with the following priorities.

Taking into account the existence or expected adoption of final primary and/or secondary legislation in third countries and in order to compare the provisions of EMIR to that legislation the following division and prioritisation of technical advice is required in two phases.

CCPs

ESMA is invited to provide technical advice on the legal and supervisory regime in specific third countries (specified below) applicable to CCPs and to advise whether they comply with legally binding requirements which are equivalent to those of Title IV of EMIR, that those CCPs are subject to effective on-going supervision and enforcement in the third country, and that its legal framework provides for an effective equivalent system for the recognition of CCPs authorised under the legal regime of a third country.

The delivery of technical advice should be prioritised in two phases.

- Phase I: the USA and Japan;

- Phase II: Switzerland, Australia, Dubai, India, Singapore and Hong Kong.

Trade repositories

ESMA is invited to provide technical advice on the legal and supervisory regime in specific third countries (specified below) and to advise whether the legal and supervisory regime in the country in which the trade repository is established ensures that trade repositories authorised there comply with legally binding requirements which are equivalent to those of EMIR, that those trade repositories are subject to effective on-going supervision and enforcement in the third country, and guarantees of professional secrecy exist that are at least equivalent to those of EMIR.

The delivery of technical advice should be prioritised in two phases.

- Phase I: the USA;

- Phase II: Hong Kong.

No further third countries are envisaged at this point in time.

Potential duplicative or conflicting requirements

ESMA is invited to provide technical advice on the legal and supervisory regime in specific third countries (specified below) and to advise whether the legal, supervisory and enforcement arrangements of a third country are equivalent to the respective requirements in EMIR, ensure an equivalent protection of professional secrecy, and are being applied in an equitable and non-distortive manner so as to ensure effective supervision and enforcement in that third country.

The determination of any such requirements and arrangements for the obligations for clearing, reporting and non-financial counterparties (Articles 4, 9 and 10 of EMIR) should be prioritised in two phases.

- Phase I: the USA and Japan;

- Phase II: Hong Kong, Switzerland, Canada and Australia.

The determination of any such requirements and arrangements for the obligations for risk mitigation techniques for OTC trades that are not cleared by a CCP (Article 11 of EMIR) should be prioritised in two phases.

- Phase I: the USA, Japan;

- Phase II: Hong Kong, Switzerland, Canada and Australia.

4. Indicative timetable.

This mandate takes into consideration that ESMA requires sufficient time to prepare its technical advice and that the Commission may seek to adopt any implementing acts according to Article 291 of the TFEU. The powers of the Commission to adopt implementing acts are subject to the control mechanisms for Member States laid down in Regulation 182/2011.

The deadlines set to ESMA to deliver technical advice are as follows:

- Phase I: 15 March 2013

- Phase II: within 3 months after the entry into force of the European Commission's Regulations with regard to regulatory and implementing technical standards for EMIR but at the latest by 15th June 2013.

ANNEX II – Update to the mandate from the European Commission

EUROPEAN COMMISSION
Directorate General Internal Market and Services
FINANCIAL MARKETS

Director

Brussels, 13 June 2013
DG Markt/G2/MJ/kc (2013) 2224977

Mr Steven Maijoor
Chair of ESMA
ESMA
103, rue de Grenelle
75007 Paris
France

Subject: **Revised request for ESMA technical advice on the equivalence between certain third country legal and supervisory frameworks and the Regulation No 648/2012 on OTC derivatives, central counterparties and trade repositories (EMIR)**

Dear Mr Maijoor,

On 11th October 2012, I sent you a formal request for ESMA technical advice on the equivalence between certain third country legal and supervisory frameworks in respect of Regulation No 648/2012 on OTC derivatives, central counterparties and trade repositories (EMIR).

This request has then been subsequently amended to revise the list of countries to be considered and extend the deadline for ESMA to deliver its technical advice, with the view to better take into account on-going international discussions and developments in this area.

This technical advice is an important element for the development of European Union's policy for third countries in the field of OTC derivatives regulation. At this stage, we consider that the deadlines for the submission of ESMA technical advice need to be reviewed in order to allow ESMA more time to take account of international on-going developments and to consider their implications fully.

As discussed between our staff, I would therefore like to formally revise the deadlines indicated in the Commission's request for technical advice and ask ESMA to deliver its advice on Japan and the USA by 1 September 2013 and, for the remaining countries, to deliver its advice by 1 October 2013. The table in annex summarises the list of technical advice requested to ESMA, as well as their respective deadlines.

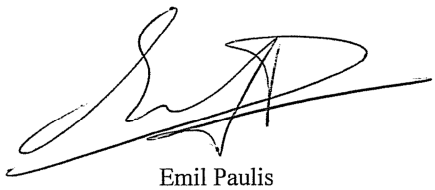
In any case, I would like to highlight that the extension of ESMA deadline to deliver its technical advice affects neither the procedure nor the timeline for recognition of third-country central counterparties or trade repositories.

Commission européenne/Europese Commissie, 1049 Bruxelles/Brussel, BELGIQUE/BELGIË - Tel. +32 22991111

In particular, as explained in our memo on the *Practical implementation of the EMIR framework to non-EU central counterparties*[1], third-country central counterparties that are currently providing services to EU clearing members should apply by 15 September 2013 in order to benefit from the transitional provisions provided by EMIR and continue providing services to EU clearing members until a decision is made by ESMA on their recognition.

In accordance with EMIR, ESMA will have 180 working days after the receipt of a complete application by a third-country CCP to make a decision on its recognition. The Commission will work in parallel to ensure the timely adoption of any equivalence decisions, as appropriate, in order to enable ESMA to adopt its recognition decision within this timeframe. I look forward to continuing working with you in close cooperation during this important work ahead.

Yours sincerely,



Emil Paulis

Enclosures: Table on the deadlines for ESMA Technical Advice

Copies: N. Calviño

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[1] http://ec.europa.eu/internal_market/financial-markets/docs/derivatives/130513_equivalence-procedure_en.pdf

13 June 2013

Deadlines for ESMA Technical Advice In view of the European Commission's Decisions on Equivalence

Third Country	**CCPs**	**Trade Repositories**	**Potential Duplicative or Conflicting Requirements**
US	1 September 2013	1 September 2013	1 September 2013
Japan	1 September 2013	1 September 2013	1 September 2013
Australia	1 October 2013	1 October 2013	1 October 2013
Canada			1 October 2013
Hong Kong	1 October 2013	1 October 2013	1 October 2013
India	1 October 2013		*To be determined*
Singapore	1 October 2013	1 October 2013	*To be determined*
South Korea	1 October 2013		*To be determined*
Switzerland	1 October 2013	*To be determined*	1 October 2013
Dubai	*Withdrawn*		

Annex III - Legally binding requirements which are equivalent to those of Title IV of EMIR (CCP Requirements)

Description of the provision in Title IV of EMIR	Description of the corresponding CFTC provisions for DCOs	Description of the corresponding SEC provisions	Description of corresponding CFTC provisions for SIDCOs and Opt-In DCOs[1]	Assessment of Equivalence
A. Organisational Requirements				
Organisational requirements A CCP must have robust governance arrangements, including a clear organisational structure with well-defined, transparent, and consistent lines of responsibility, effective processes to identify, manage, monitor and report the risks to which it is or might be exposed and adequate internal control mechanisms, including sound administrative and accounting procedures.[2] • ***Governance arrangements***. A CCP must define its organisational structure as well as the policies, procedures and processes by which its board and senior management operate. These governance arrangements must be clearly specified and well-documented.[3]	***Organisational requirements*** A DCO must establish governance arrangements that are transparent to fulfil public interest requirements and to permit the consideration of the views of owners and clearing members.[32] A DCO must establish and maintain written policies, procedures, and controls, approved by its board of directors, which establish an appropriate risk management framework that, at a minimum, clearly identifies and documents the range of risks to which the DCO is exposed, addresses the monitoring and management of the entirety of those risks, and provides a mechanism for internal audit.[33] Under proposed CFTC Rules, a DCO must establish governance arrangements that are well-defined and include a	***Organisational requirements*** A CA must establish, implement, maintain and enforce polices that provide for a well-founded, transparent, and enforceable legal framework for each aspect of its activities in all relevant jurisdictions.[105] To be registered with the SEC, a CA must be organised and have the capacity to be able to facilitate the prompt and accurate clearance and settlement of securities and derivative transactions for which it is responsible, to safeguard securities and funds in its custody or control or for which it is responsible, to comply with the law, and to enforce compliance by its clearing members with its rules.[106] A CA is required to describe its organisational structure and functions of senior officers as part of the	***Organisational requirements*** • ***Governance arrangements.*** Under proposed CFTC rules, SIDCOs and Opt-In DCOs must establish governance arrangements that: (1) are written, clear and transparent, place a high priority on the safety and efficiency of the SIDCO or Opt-In DCO, and explicitly support the stability of the broader financial system and other relevant public interest considerations; (2) ensure that the design, rules, overall strategy, and major decisions of the SIDCO or Opt-In DCO appropriately reflect the legitimate interests of clearing members, customers of clearing members, and other relevant stakeholders; and (3) disclose, to an extent consistent with other statutory and regulatory	***Organisational requirements*** ***CFTC - DCOs.*** *The CFTC regime for DCOs includes organisational requirements which are applicable, at a jurisdictional level, to DCOs subject to regulation by the CFTC, and which are broadly equivalent to those of EMIR.* • ***Governance arrangements.*** There are no specific requirements for DCOs that are part of a group; however, under proposed CFTC rules, DCOs would be subject to conflict of interest restrictions, including limits on voting interest, and are required to have a board with at least 35% Public Directors (*i.e.*, directors found to have no "material relationship," with the DCO). If the DCO is a subsidiary, these limits would apply to the parent. A DCO is not specifically required to have a chief technology officer; however, a DCO must have a rigorous program of risk analysis and oversight with respect to its operations and automated systems.

Description of the provision in Title IV of EMIR	Description of the corresponding CFTC provisions for DCOs	Description of the corresponding SEC provisions	Description of corresponding CFTC provisions for SIDCOs and Opt-In DCOs[1]	Assessment of Equivalence
They should include: (i) the composition, role and responsibilities of the board and any board committees; (ii) the roles and responsibilities of the management; (iii) the senior management structure; (iv) the reporting lines between the senior management and the board; (v) the procedures for the appointment of board members and senior management; (vi) the design of the risk management, compliance and internal control functions; (vii) the processes for ensuring accountability to stakeholders.[4] The risk management policies, procedures, systems and controls must be part of a coherent and consistent governance framework which is reviewed and updated regularly.[5] A CCP which is part of a	clear organisational structure with consistent lines of responsibility and effective internal controls.[34] • ***Governance arrangements***. Governance arrangements for DCOs should be clear and transparent and be designed to promote the safety and efficiency of the DCO and to support the stability of the broader financial system.[35] Under proposed CFTC Rules, a DCO must establish governance arrangements that are well-defined and include: (i) a description of how the composition of its board and each of its committees allows the DCO to comply with applicable core principles, regulations and the rules of the DCO;[36] (ii) a clear organisational structure with consistent lines of responsibility;[37] (iii) the nomination process for the board of	registration process.[107] Under SEC guidance, a CA should have an internal audit department to review and evaluate the CA's internal accounting controls.[108] Also, a CA's board of directors must be informed by management about the CA's operations so the board can discharge its oversight responsibility over management's performance of its on-going duties to assure both the operational capability and the integrity of the CA.[109] • ***Governance arrangements***. A CA must have clear and transparent governance arrangements that fulfil the public interest requirements applicable to CAs, support the objectives of owners and clearing members, and promote the effectiveness of the CA's risk management procedures.[110] A CA is required to describe its organisational structure as part of the registration process.[111] Under proposed SEC Rules, a CA must establish	requirements on confidentiality and disclosure: (i) major decisions of the board of directors to clearing members, other relevant stakeholders, and to the Commission, and (ii) major decisions of the board of directors having a broad market impact to the public.[177] Under proposed CFTC rules, SIDCOs and Opt-In DCOs must have rules and procedures that: (1) describe the SIDCO's management structure; (2) clearly specify the roles and responsibilities of the board of directors and its committees, including the establishment of a clear and documented risk management framework; (3) clearly specify the roles and responsibilities of management; (4) establish appropriate compensation policies; (5) establish procedures for managing conflicts of interest among board members; and (6) assign responsibility and	The CFTC regime does not specifically require that chief risk officers and chief compliance officers are "dedicated employees." • ***Risk management and internal control mechanisms***. EMIR specifically requires consideraiton of risks posed by interoperable CCPs, liquidity providers, central securities depositories, trading venues served by the CCP or other critical service providers, while the CFTC regime relies on more general language regarding consideration of the range of risks to which the DCO is exposed. A DCO is not specifically required to have systems that allow clearing members or their clients to obtain information to apply risk management policies and procedures appropriately; however, a DCO must have access to sufficient information to allow it to perform stress tests on its own financial resources, clearing member accounts, and large trader accounts. The CFTC regime does not specifically require a DCO to ensure that its risk management function has the necessary authority, expertise and access to all relevant

Description of the provision in Title IV of EMIR	Description of the corresponding CFTC provisions for DCOs	Description of the corresponding SEC provisions	Description of corresponding CFTC provisions for SIDCOs and Opt-In DCOs[1]	Assessment of Equivalence
group must consider the group's implications for its own governance arrangements, including (i) whether it has the necessary level of independence to meet its regulatory obligations as a separate legal entity, and (ii) whether its independence could be compromised by its group structure or any board members shared with other group entities.[6] A CCP must have adequate human resources to meet all of its obligations under EMIR, and should not share such resources with other group entities, unless under the terms of an outsourcing arrangement in accordance with EMIR, Art. 35.[7] To ensure that CCPs have the necessary levels of human resources, that CCPs are accountable for their activities, and that CCPs Competent	directors, which the DCO must make available to the public and the CFTC;[38] (iv) effective internal controls;[39] and; (v) a description of how its governance arrangements permit the consideration of the views of its owners, whether voting or non-voting, and its clearing members, including, without limitation, clearing members and customers.[40] Governance arrangements for DCOs should be designed to support the objectives of relevant stakeholders.[41] A DCO must establish an appropriate risk management framework that provides a mechanism for internal audit, which must be regularly reviewed and updated as necessary.[42] Under proposed CFTC Rules, a parent entity that controls the day-to-day business operations of a	governance standards for its board members and board committee members that address: (1) a clear articulation of the roles and responsibilities of directors serving on the board and any board committees; (2) director qualifications providing criteria for expertise in the securities industry, clearance and settlement of securities transactions, and financial risk management; (3) disqualifying factors concerning serious legal misconduct, including violations of the Federal securities laws; and (4) policies and procedures for the periodic review by the board or a board committee of the performance of its individual members.[112] A board of an SBS CA must establish a nominating committee.[113] A CA must have a chief compliance officer, who must be responsible for administering policies and procedures required under	accountability for risk decisions and for implementing rules concerning default, recovery, and wind-down[178]. Under proposed CFTC rules, the board members and managers of a SIDCO or Opt-In DCO must have the appropriate experience, skills, incentives and integrity; risk management personnel must have sufficient independence, authority, resources and access to the board of directors; and the board of directors must include members who are not executives, officers or employees of the SIDCO or Opt-in DCO or of their affiliates.[179] • ***Risk management and internal control mechanisms.*** Under proposed CFTC rules, the board members and managers of a SIDCO or Opt-In DCO must have the appropriate experience, skills, incentives and integrity; risk management personnel have	information. However, the CFTC regime does require that a DCO have a well-documented and appropriate risk management framework that monitors and manages all the risks to which the DCO is exposed. • ***Compliance policy, procedures and Compliance function***. In this regard, the CFTC regime includes legally binding requirements that are equivalent to those of EMIR. • ***Organisational structure and separation of reporting lines***. A DCO is not required to have a remuneration committee or to establish appropriate remuneration policies; however, the DCO's board or senior officer must approve the compensation of the chief compliance officer and under proposed CFTC rules the compensation of the Public Directors and other non-executive members of the board must not be linked to the performance of the DCO. CFTC Rules do not specifically define the responsibilities of a DCO's board, beyond specifically

Description of the provision in Title IV of EMIR	Description of the corresponding CFTC provisions for DCOs	Description of the corresponding SEC provisions	Description of corresponding CFTC provisions for SIDCOs and Opt-In DCOs[1]	Assessment of Equivalence
Authorities have relevant points of contact within the CCPs they supervise, all CCPs should have at least a chief risk officer, a chief compliance officer and chief technology officer, which positions must be filled by dedicated employees of the CCP.[8] • ***Risk management and internal control mechanisms***. A CCP must have a sound framework for the comprehensive management of all material risks, and must establish documented policies, procedures and systems and controls to identify measure, monitor and manage such risks. These must be structured to ensure that clearing Members properly manage and contain the risks they pose to a CCP.[9] A CCP must take an integrated and comprehensive view of, and ensure that its risk management tools can	DCO would be subject to CFTC governance requirements and oversight.[43] A DCO must establish and maintain resources that allow for the fulfilment of each obligation and responsibility of the DCO in light of the risks identified.[44] A DCO may maintain its operational resources through written contractual (outsourcing) arrangements with another DCO or other service provider in accordance with CFTC Regulation 39.18(f).[45] A DCO must have a chief compliance officer[46] and a chief risk officer. • ***Risk management and internal control mechanisms***. A DCO must establish and maintain written policies, procedures, and controls, approved by its board of directors, which establish an appropriate risk management framework that, at a	law, ensuring compliance with the law and establishing procedures for remediation of non-compliance.[114] Under SEC guidance, CA management must supervise the establishment, maintenance and updating of safeguards and report strengths and weaknesses periodically to the board or its designee, and management also must continually consider, and advise the board of directors of, the impact that new or expanded services or volume increases would have on the CA's processing capacity.[115] As part of the registration process, a CA must describe whether clearing activities are conducted primarily by a division, subdivision or other segregable entity within the registrant and must provide information regarding any arrangement in which another person	sufficient independence, authority, resources and access to the board of directors; [...]. • ***Compliance policy, procedures and Compliance function.*** Under proposed CFTC rules, the rules and procedures of a SIDCO or an Opt-In DCO must: [...](5) establish procedures for managing conflicts of interest among board members[180]. • ***Organisational structure and separation of reporting lines.*** Under proposed CFTC rules, the rules and procedures of a SIDCO or an Opt-In DCO must : [...] (2) clearly specify the roles and responsibilities of the board of directors and its committees, including the establishment of a clear and documented risk management framework; (3) clearly specify the roles and responsibilities of management[181]. • ***Remuneration policy***.	requiring it to establish an appropriate risk management framework and generally requiring it to operate pursuant to a framework that addresses each aspect of the DCO's activities. CFTC rules require that the DCO's chief compliance officer must report directly to the DCO's board. While CFTC rules do not specifically require a DCO's board to oversee accountability to shareholders, employees, customers and other stakeholders, a DCO's board must include market clearing members and, under proposed CFTC rules, a DCO's governance arrangements must support the objectives of relevant stakeholders and permit the consideration of the views of its owners, whether voting or non-voting, and its clearing members, including clearing members and customers. The CEA and CFTC regulations do not specifically define the responsibilities of a DCO's senior management; however, a DCO must have a chief risk officer and a chief compliance officer, who together are responsible for items similar to (i) – (vi) in the third paragraph of the EU

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manage and report on, all relevant risks, including risks from and to its Clearing Members (and to the extent practicable, their clients), and risks from and to other entities including interoperable CCPs, securities settlement and payment systems, settlement banks, liquidity providers, central securities depositories, trading venues served by the CCP and other critical service providers.[10] A CCP must have robust information and risk-control systems which allow the CCP and where appropriate, its Clearing Members, and to the extent practicable, their clients, to obtain timely information and apply risk management policies and procedures appropriately (including sufficient information to ensure that credit and liquidity exposures are monitored continuously at CCP-level, Clearing Member-level	minimum, clearly identifies and documents the range of risks to which the DCO is exposed, addresses the monitoring and management of the entirety of those risks, and provides a mechanism for internal audit. The risk management framework must be regularly reviewed and updated as necessary.[47] Under proposed CFTC Rules, a DCO must ensure that it possesses the ability to manage the risks associated with discharging the responsibilities of the DCO through the use of appropriate tools and procedures.[48] A DCO must measure its credit exposure to each clearing member periodically during each business day.[49] A DCO must adopt rules that require its clearing members to maintain current written risk management policies and procedures that	processes, keeps, transmits or maintains any securities, funds, records or accounts relating to clearing activities[116] or any management function that is performed by contract (or otherwise).[117] Under proposed SEC Rules, a CA must designate a chief compliance officer.[118] • ***Risk management and internal control mechanisms***. A CA must establish, implement, maintain and enforce written policies and procedures reasonably designed to: (1) identify sources of operational risk and minimise them through the development of appropriate systems;[119] (2) employ money settlement arrangements that eliminate or strictly limit the CA's settlement bank risks; (3) evaluate the potential sources of risks that can arise when the CA establishes links either	Under proposed CFTC rules, the rules and procedures of a SIDCO or an Opt-In DCO must [...] (4) establish appropriate compensation policies; [182]. • ***Information technology systems***. Under proposed CFTC rules, SIDCOs and Opt-In DCOs are required to accommodate internationally accepted communication procedures and standards[183]. • ***Disclosure.*** Under proposed CFTC rules, SIDCOs and Opt-In DCOs are required to [...] (3) disclose, to an extent consistent with other statutory and regulatory requirements on confidentiality and disclosure: (i) major decisions of the board of directors to clearing members, other relevant stakeholders, and to the Commission, and (ii) major decisions of the board of directors having a broad market impact to the public.	Rules column. • ***Remuneration policy.*** A DCO is not specifically required to have a remuneration committee or adopt a remuneration policy. • ***Information technology systems***. In this regard, the CFTC regime includes legally binding requirements that are equivalent to those of EMIR. • ***Disclosure.*** CFTC Rules do not specifically require DCOs to disclose information free of charge, but most information is required to be posted on the DCO's website. A DCO is not specifically required to disclose interoperability arrangements, use of collateral, eligible collateral and applicable haircuts. A DCO is not specifically required to disclose contracts with clearing members and clients. • ***Auditing.*** CFTC Rules require internal audit but do not specifically require a DCO to have internal audit assessments based on a comprehensive audit plan that is reviewed and reported to the CFTC at least annu-

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and, to the extent practicable, client-level).[11] A CCP must ensure that its risk management function has the necessary authority, expertise and access to all relevant information, and that it is sufficiently independent from the CCP's other functions. The chief risk officer must implement the CCP's risk management framework.[12] A CCP must have adequate internal control mechanisms to assist the board in monitoring the adequacy and effectiveness of its risk management policies, procedures and systems (including sound administrative and accounting procedures, a robust compliance function and an independent internal audit function).[13] A CCP's financial statements must be	address the risks that such clearing members may pose to the DCO and the DCO must periodically review such policies, procedures and practices.[50] A DCO must establish and maintain a program of risk analysis and oversight with respect to its operations and automated systems to identify and minimise sources of operational risk.[51] A DCO must employ money settlement arrangements to eliminate or strictly limit the exposure of the DCO to settlement bank risks.[52] A DCO must adopt rules that ensure that it has the authority to request and obtain information and documents from its clearing members regarding their risk management policies, procedures, and practices, including, but not limited to, information and documents relating to the liquidity of their financial	cross-border or domestically to clear trades, and ensure that the risks are managed prudently on an on-going basis;[120] (4) eliminate principal risk by linking securities transfers to funds transfers in a way that achieves delivery versus payment;[121] (5) institute risk controls, including collateral requirements and limits to cover the CA's credit exposure to each clearing member exposure fully;[122] and (6) state to its clearing members the CA's obligations with respect to physical deliveries and identify and manage the risks from these obligations.[123] A CA must establish, implement, maintain and enforce written policies and procedures reasonably designed to (1) require clearing members to have sufficient financial resources and robust operational capacity to meet obligations arising	[184] Under proposed CFTC rules, SIDCOs and Opt-In DCOs are required to disclose their responses to the CPSS-IOSCO Disclosure Framework, relevant basic data on transaction volume and values, to publish their rules, policies, and procedures describing whether customer funds are protected on an individual or omnibus basis and whether customer funds are subject to any legal or operational constraints that may impair the ability of the SIDCO or Opt-In DCO to segregate or port the positions and related collateral of a clearing member's customers.[185] • ***Auditing.*** No corresponding provisions.	ally. A DCO is not specifically required to ensure that audits may be performed on an event-driven basis at short notice. Like the relevant provisions in EMIR, the CFTC regime requires a DCO to complete annual audits; however, the scope of the CFTC's audit requirement does not expressly cover the same items as in EMIR. EMIR is generally more detailed with regards to organisational requirements and gaps exist between EMIR and the CFTC regime for DCOs if the EMIR requirements are assessed on a line-by-line basis. However, on balance, the gaps do not undermine the consistency of objectives between the CFTC regime for DCOs and the regime under EMIR. ***SEC.*** *The SEC regime for CAs includes organisational requirements which are applicable, at a jurisdictional level, to CAs subject to regulation by the SEC, and which are broadly equivalent to those of EMIR.* • ***Governance arrangements***. EMIR includes more specific gov-

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prepared annually and audited by statutory auditors / audit firms within the meaning of Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts.[14] • ***Compliance policy, procedures and Compliance function***. A CCP must establish, implement and maintain adequate policies and procedures to detect any risk of failure by the CCP and its managers and employees to comply with the CCP's obligations under EMIR.[15] A CCP must ensure that its rules, procedures and contractual arrangements are clear and comprehensive and ensure compliance with EMIR, as well as all other applicable regulatory and supervisory requirements. These rules, procedures and contractual arrangements should be accurate, up-to-date and	resources and their settlement procedures.[53] A DCO must provide market participants with sufficient information for them to identify and evaluate the risks and costs associated with using its services.[54] A DCO must enter into, and abide by the terms of, each appropriate and applicable domestic and international information-sharing agreement, and must use relevant information obtained from each such agreement in carrying out its risk management program.[55] Proposed CFTC Rules would require DCOs to specify and enforce fitness standards for directors, including those serving on the Risk Management Committee.[56] The CFTC address independence of the risk function through proposed composition requirements for the risk management committee,	from participation and have procedures in place to monitor that such requirements are met on an on-going basis[124] and (2) provide market participants with sufficient information for them to identify and evaluate the risks and costs associated with using its services.[125] A CA is required to establish, implement, maintain and enforce policies and procedures reasonably designed to measure and manage various risks to the CA.[126] Under SEC guidance, CA management should perform periodic risk assessments of the CA's operations and its automatic data processing systems and facilities and provide the board or its designee with the risk assessment reports.[127] Under SEC guidance, a CA should have an adequately and competently staffed		ernance framework requirements while the SEC regime and guidance prescribes broader and more general requirements and relies more heavily on supervisory processes. For example, the SEC has advised through guidance that a CA should ensure that management sufficiently informs the board of the CA so that the board can discharge its oversight responsibility. Under other SEC guidance, CA management is suggested to perform specific duties (e.g. supervise the establishment, maintenance and updating of "safeguards,") and, under US statute, the chief compliance officer has specific duties. There are no specific requirements for a CA that is part of a group; however, under proposed SEC rules, a CA is subject to conflict of interest restrictions and is required to have independent directors on its board. Under proposed SEC rules, CAs clearing SBS must retain information relating to voting interests in the CA. The SEC regime does not prescribe specific conditions for how a CA may outsource its activities to other

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readily available to the CCPs Competent Authority, Clearing Members and (where appropriate) Clients. A CCP must have a process for proposing and implementing changes to its rules and procedures and, prior to implementing any material changes, should consult with all affected Clearing Members and submit the proposed changes to its CCPs Competent Authority. A CCP must identify and analyse potential conflicts of law issues and develop rules and procedures to mitigate legal risks resulting from such issues.[16] A CCP must establish and maintain a permanent and effective compliance function, which operates independently from the other functions of the CCP and has the necessary authority, resources,	which would be required to include Public Directors,[57] through proposed conflict of interest rules that would require reporting if the board overrules a risk management committee decision or the risk management committee overrules a sub-committee decision, [58] and through internal audit requirements.[59] A DCO must have a chief risk officer who is responsible for implementing the risk management framework.[60] A DCO must establish an appropriate risk management framework that provides a mechanism for internal audit.[61] A DCO must establish the position of chief compliance officer.[62] Under proposed CFTC Rules, a DCO must establish governance arrangements that include	internal audit department which reviews, monitors and evaluates the CA's system of internal accounting control.[128] A CA must have a chief compliance officer, who must be responsible for administering policies and procedures required under law, ensuring compliance with the law, and establishing procedures for remediation of non-compliance.[129] A CA must post on its website an annual audited financial report, audited in accordance with standards of the Public Company Accounting Oversight Board by a registered public accounting firm that is qualified and independent in accordance with Rule 2-01 of SEC Regulation S-X.[130] • ***Compliance policy, procedures and Compliance function***. Under proposed rules, a CA must		group members, although it requires disclosure regarding such arrangements. A CA is not specifically required to have a chief risk officer or chief technology officer. • ***Risk management and internal control mechanisms***. EMIR prescribes risk management and internal control requirements more generally, whereas the SEC regime specifically identifies certain categories of risk (e.g. operational, principal/settlement risk, credit risk, etc.) that a CA must identify and manage. EMIR specifically requires CCPs to have a chief risk officer and an independent risk management function with necessary authority, expertise and access to all relevant information. Whereas the SEC does not prescribe as detailed requirements for the risk management function as under EMIR, including the absence of a specific requirement to have a chief risk officer. • ***Compliance policy, procedures and Compliance***

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expertise and access to all relevant information. A CCP's chief compliance officer must, *inter alia*: (i) monitor the adequacy and effectiveness of a CCP's compliance policies; (ii) administer the compliance policies established by senior management and the board; (iii) report regularly to the board on compliance by the CCP and its employees with EMIR; (iv) establish procedures for the remediation of instances of non-compliance; and (v) ensure that persons involved in the compliance function do not perform the services or activities they monitor. • ***Organisational structure and separation of reporting lines***. A CCP must define the composition, role and responsibilities of board and senior management, and any board committees (including an audit committee	effective internal controls.[63] A DCO must provide to the CFTC its audited year-end financial statements or, if there are no financial statements available for the DCO itself, the consolidated audited year-end financial statements of the DCO's parent company.[64] • ***Compliance policy, procedures and Compliance function***. To be registered and maintain registration as a DCO, a DCO must comply with each core principle described in the CEA and any requirement that the CFTC may impose by rule or regulation.[65] A DCO's chief compliance officer must establish and follow appropriate procedures for the handling, management response, remediation, retesting, and closing of noncompliance issues.[66] Before implementing or	designate a chief compliance officer whose role is to ensure compliance with the Exchange Act and the rules and regulations thereunder.[131] CAs are required to file proposed rule changes with the SEC for approval. The filing process provides for public disclosure and an opportunity for interested parties to comment on the proposed rule change.[132] Rule changes include any material aspect of the operation of the CA's facilities and any statement made generally available to members, clearing members, or persons having or seeking access to facilities of the CA ("specified persons"), or to a group or category of specified persons, that establishes or changes any standard, limit, or guideline with respect to the rights, obligations, or privileges of specified persons.[133] Also, any		***function***. The SEC regime does not specifically require a CA to analyse potential conflicts of law, but a CA must have an enforceable legal framework in all relevant jurisdictions and, under proposed SEC rules, a CA's chief compliance officer must, in consultation with the board, resolve any conflicts of interest that may arise. Proposed SEC rules would require a CA to establish a permanent and independent compliance function by requiring the CA to have a chief compliance officer who reports directly to the board and whose compensation must be approved by a majority of the board. • ***Organisational structure and separation of reporting lines***.A CA is not specifically required to have a remuneration committee or remuneration policies, but, under proposed SEC Rules, the board is required to set the compensation of the chief compliance officer. EMIR is more specific than the SEC regime with regards to establishing specific responsibilities of the board. A CA's board is not specifically required to oversee accountability to

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and a remuneration committee).[17] A CCP's board must be responsible for: (i) establishing the CCP's objectives and strategies; (ii) monitoring of senior management; (iii) establishing appropriate remuneration policies; (iv) establishment of the risk management function and oversight of the risk management, compliance, internal control and outsourcing functions; (v) oversight of compliance with EMIR; and (vi) accountability to shareholders, employees, customers and other stakeholders.[18] A CCP's senior management must be responsible for: (i) ensuring consistency of a CCP's activities with the objectives and strategies determined by the board; (ii) designing and establishing compliance and internal control	amending any rule (other than delisting or decertifying a product with no open interest), a DCO must file the rule with the CFTC for approval or comply with procedures governing the DCO's self-certification. In the submission, the DCO must include, among other requirements, (i) a certification by the DCO that the rule complies with the CEA and the CFTC's regulations thereunder and (ii) an explanation of any opposing views expressed to the DCO by its governing board or committee members, members of the DCO or market participants, or a statement that no such opposing views were expressed. A DCO may place certain generally less significant rules and amendments into effect without prior approval by the CFTC or self-certification as long as it either provides notice to	stated policy, practice, or interpretation of the CA is deemed to be a proposed rule change unless it is implied by an existing rule or concerned solely with the administration of the CA.[134] The SEC will approve a proposed rule change only if it is consistent with the requirements of Exchange Act and SEC Rules and regulations.[135] The CA's rules are (i) binding on the CA itself as well as its clearing members; (ii) cannot be removed or amended without SEC review and approval; and (iii) can be examined against and enforced by the SEC. A systemically important CA must provide advance notice to the SEC of any proposed change to its rules, procedures, or operations that could materially affect the nature or level of risks it presents.[136] Under SEC guidance, CAs should incorporate in		shareholders, employees, customers and other stakeholders but is required to implement rules providing clearing members a meaningful opportunity to be represented in the selection of directors and the administration of the CA's affairs. A CA's management is not specifically required to be responsible for ensuring the consistency of a CCP's activities with the objectives and strategies determined by the board. However, under SEC guidance, a CA's senior management must report periodically to the board concerning strengths and weaknesses in the CA's system of safeguards, perform periodic risk assessments and provide the board or its designee with the risk assessments. EMIR specifically requires CCPs to have reporting lines for risk management, compliance and internal audit that are clear and separate from those of a CA's other operations. Under SEC guidance, a CA's internal audit department must maintain objectivity in the performance of its duties and should report periodically to the audit

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procedures promoting the CCP's objectives; (iii) regularly reviewing and testing internal control procedures; (iv) ensuring that sufficient resources are devoted to risk management and compliance; (v) the risk control process; and (vi) ensuring that risks posed to the CCP by its clearing and related activities are addressed.[19] A CCP must maintain a clear separation between the reporting lines for risk management and those for the other operations of the CCP.[20] A CCP must have clear and direct reporting lines between its board and senior management. The reporting lines for risk management, compliance and internal audit must be clear and separate from those of a CCP's other operations.[21] • ***Remuneration policy***. A CCP must adopt, im-	the CFTC of the rule or amendment or maintains documentation regarding all changes to rules and amendments, depending on the type of rule or amendment implemented.[67] A DCO that has been designated by the Financial Stability Oversight Council as a systemically important DCO must provide notice to the CFTC not less than 60 days in advance of any proposed change to its rules, procedures, or operations that could materially affect the nature or level of risks presented by the systemically important DCO.[68] A DCO must make its rulebook (and any other matter relevant to the clearing and settlement activities of the DCO) readily available to the general public.[69] If a DCO provides clearing	their rules a procedure pursuant to which clearing members and other registered CAs will normally receive the text or a brief description of the proposed rule and its purpose and effect in sufficient time, in view of the date by which the SEC may be expected to act upon the filing, to permit the clearing members and other registered CAs to comment to the SEC.[137] A CA must have policies that provide for a well-founded, transparent and enforceable legal framework for each aspect of its activities in all relevant jurisdictions.[138] Under proposed SEC Rules, the chief compliance officer must report directly to the board of directors or to the senior officer of the CA (the CEO or other equivalent officer), and the chief compliance officer's compensation		committee. Under proposed SEC Rules, the chief compliance officer must report directly to the board or to the senior officer of the CA. Under SEC guidance, CAs should be organised in a manner that effectively establishes operational and audit controls while fostering director independence. • ***Remuneration policy***. A CA is not specifically required to adopt a remuneration policy, nor is it required to establish a remuneration committee. Under proposed SEC rules, a majority of the CA's board must approve the compensation of the chief compliance offer. • ***Information technology systems***. EMIR specifically requires CCPs to ensure that their systems have sufficient capacity to process all remaining transactions before the end of the day in circumstances in which a major disruption has occurred. In contrast, the SEC Rules regime requires CAs to have business continuity plans that allow for timely recovery of operations and fulfilment of the CA's obligations. Also, under SEC

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plement and maintain a remuneration policy which promotes sound and effective risk management and does not create incentives to relax risk standards.[22] The policy must be designed, overseen and reviewed at least annually by the remuneration committee. The remuneration policy should be designed to align the level and structure of remuneration with prudent risk management, taking into account prospective risks as well as existing risks. In the case of variable remuneration, the policy must take into account possible mismatches of performance and risk periods, and ensure payments are deferred appropriately. The fixed and variable components of total remuneration must be balanced and must be consistent with risk alignment. The remuneration of staff engaged in risk management, compli-	services outside the United States, the DCO must identify and address any material conflict of law issues and the DCO's contractual agreements must specify a choice of law. The DCO also must be able to demonstrate the enforceability of its choice of law in relevant jurisdictions and that its rules, procedures, and contracts are enforceable in all relevant jurisdictions.[70] A DCO must have a chief compliance officer, with the full responsibility and authority to develop and enforce appropriate compliance policies and procedures.[71] The chief compliance officer must have the background and skills appropriate for fulfilling the responsibilities of the position. No individual who would be disqualified from registration under CEA Sections 8a(2) or 8a(3) may serve as a chief	and removal must require the approval of a majority of the board.[139] Under proposed SEC Rules, a CA's chief compliance officer must, among other things: (1) in consultation with the board, a body performing a function similar thereto, or the senior officer of the CA, resolve any conflicts of interest that may arise; (2) be responsible for administering each policy and procedure required under applicable law; (3) ensure compliance with the securities laws and regulations and establish and follow appropriate procedures for the prompt handling, management response, remediation, retesting, and closing of non-compliance issues; and (4) prepare and sign an annual report that describes the compliance of the CA with its obligations under the law and regulations.[140] Under proposed SEC Rules, the		guidance, a CA must have a written contingency plan that covers off-site storage of software, files and critical forms and supplies needed for processing operations. A CA is not specifically required to base its information technology systems on internationally recognised technical standards or industry best practices. • ***Disclosure.*** The SEC regime does not specifically require CAs to disclose contracts with clearing members and clients, interoperability arrangements, or a list of clearing members. A CA is not specifically required to disclose eligible collateral and applicable haircuts to the public free of charge, but it must disclose its margin methodology to clearing members and any information necessary to provide market clearing members with sufficient information for them to identify and evaluate the risks and costs associated with using its services. • ***Auditing.*** The SEC regime does not specifically require CAs to be subject to frequent and independent audits besides an annual independ-

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ance and internal audit should be independent of the CCP's business performance.[23] The remuneration policy should be independently audited on an annual basis (with the results being made available to the relevant CCPs Competent Authority).[24] • ***Information technology systems***. A CCP must maintain information technology systems which are adequate to deal with the complexity, variety and type of services and activities it performs.[25] In particular, a CCP should ensure that its systems are reliable, secure and resilient (including in stressed market conditions), are scalable, and have sufficient redundancy capacity to process all remaining transactions before the end of the day in circumstances in which a major disruption has occurred.[26] A CCP must base its	compliance officer.[72] The chief compliance officer must: (i) report directly to the board or to the senior officer of the DCO and meet with the board or the senior officer at least once a year; (ii) review the DCO's compliance with the core principles described in CEA Section 5b and CFTC regulations thereunder; (iv) in consultation with the board of the DCO or the senior officer, resolve any conflicts of interest that may arise; (v) establish and administer written policies reasonably designed to prevent violations of the CEA; (vi) take reasonable steps to ensure compliance with the CEA and CFTC regulations relating to agreements, contracts, or transactions; (vii) establish procedures for the remediation of noncompliance issues identified by the chief compliance officer	chief compliance officer must annually prepare and sign a report that contains a description of the compliance of the CA with the Federal securities laws and the SEC Rules thereunder, and each policy and procedure of the CA of the compliance officer (including the code of ethics and conflict of interest policies). This report must be submitted to the board of directors and audit committee (or equivalent bodies) of the CA and be filed with the SEC.[141] • ***Organisational structure and separation of reporting lines***. Under proposed SEC Rules, a CA must establish governance standards for its board members and board committee members that must provide a clear articulation of the roles and responsibilities of directors serving on the board and any board committees.[142] Under SEC guidance, a		ent audit of the CA's financial statements. The SEC requires a model validation review annually and that the reviewer is qualified and free from influence from the persons responsible for development or operation of the systems and models being validated. The SEC regime does not specifically require CAs to subject its clearing operations, risk management processes, and internal control mechanisms to independent audit annually, but its financial statements must be independently audited annually. The SEC regime does not specifically require CAs to ensure that audits may be performed on an event-driven basis at short notice. EMIR is generally more detailed with regards to organisational requirements and gaps exist between EMIR and the SEC regime for CAs if the EMIR requirements are assessed on a line-by-line basis. However, on balance, the gaps do not undermine the consistency of objectives between the SEC regime for CAs and the regime under EMIR. ***CFTC – SIDCOs and Opt-In DCOs.***

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information technology systems on internationally recognized technical standards and industry best practices. A CCP must maintain a robust information security framework that appropriately manages its information security risk, including policies to protect information from unauthorised disclosure, ensure data accuracy and integrity and guarantee the availability of the CCP's services.[27] • ***Disclosure***. A CCP must make information relating to the following available to the public free of charge: (i) its governance arrangements; (ii) its rules (including default procedures, risk management systems, rights and obligations of Clearing Members and Clients, clearing services and rules governing access to the CCP (including admission, suspension and exit criteria for clear-	through any compliance office review, look-back, internal or external audit finding, self-reported error, or validated complaint; and (vii) establish and follow appropriate procedures for the handling, management response, remediation, retesting, and closing of noncompliance issues.[73] • ***Organisational structure and separation of reporting lines***. Under proposed CFTC Rules, a DCO must establish governance arrangements that are well-defined, describe how the composition of its board and each of its committees allows the DCO to comply with applicable core principles, regulations and the rules of the DCO,[74] and clearly articulate the roles and responsibilities of the board.[75] A DCO must operate pursuant to a well-	CA's audit committee should be composed of non-management directors who will devote sufficient time to the work of the committee and who are qualified to discharge effectively the committee's responsibilities.[143] A CA's board must be responsible for: (i) under SEC guidance, oversight over management's performance of its ongoing duties to assure both the operational capability and the integrity of the CA;[144] (ii) under proposed SEC Rules, the chief compliance officer's compensation and removal;[145] (iii) under proposed SEC Rules, the designation of a chief compliance officer and, under SEC guidance, the establishment of the audit committee, which should oversee the internal audit department,[146] (iv) under proposed SEC Rules, oversight of the chief		*Taken in conjunction with the corresponding CFTC provisions for DCOs, the CFTC regime for SIDCOs and Opt-In DCOs includes organisational requirements which are applicable, at a jurisdictional level, to SIDCOs and Opt-In DCOs subject to regulation by the CFTC, and which are broadly equivalent to those of EMIR.*

Description of the provision in Title IV of EMIR	Description of the corresponding CFTC provisions for DCOs	Description of the corresponding SEC provisions	Description of corresponding CFTC provisions for SIDCOs and Opt-In DCOs[1]	Assessment of Equivalence
ing membership), contracts with Clearing Members and Clients, interoperability arrangements and use of collateral and default fund contributions); (iii) eligible collateral and applicable haircuts; and (iv) a list of all current Clearing Members.[28] • ***Auditing***. A CCP must be subject to frequent and independent audits, the results of which must be communicated to the board and made available to the CCP's Competent Authority.[29] A CCP must establish and maintain an internal audit function which is separate and independent from the other functions (including management) and reports directly to the board. Its role is to (i) establish, implement and maintain an audit plan to examine and evaluate the adequacy and effectiveness of the CCP's systems, internal	founded, transparent, and enforceable legal framework that addresses each aspect of the activities of the DCO.[76] A DCO's board of directors must approve policies, procedures, and controls that establish an appropriate risk management framework.[77] A DCO's chief compliance officer must report directly to the board.[78] A DCO must have a chief risk officer who must be responsible for implementing the risk management framework and for making appropriate recommendations to the DCO's risk management committee or board of directors, as applicable, regarding the DCO's risk management functions.[79] A DCO must have a Risk Management Committee. The Risk Management Committee must report to the board of directors of	compliance officer, who must report directly to the board of directors or to the senior officer of the CA (the CEO or other equivalent officer);[147] (v) under SEC guidance, obtaining annually an opinion report on the CA's system of internal accounting control;[148] and, (vi) under the Exchange Act, implementing rules that provide clearing members with a meaningful opportunity to be represented in the selection of the CA's directors and the administration of its affairs.[149] Under SEC guidance, a CA's senior management must be responsible for: (i) supervising the establishment, maintenance and updating of safeguards and reporting periodically to the board or its designee concerning strengths and weaknesses in the CA's system of safeguards;[150]		

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control mechanisms and governance arrangements, (ii) issue recommendations based on the result of work carried out in accordance with item (i), (iii) verify compliance with those recommendations and (iv) report internal audit matters to the board. Internal audit must assess the effectiveness of a CCP's risk management processes and control mechanisms, in a manner proportionate to the risks faced by the different business lines. Internal audit assessments must be based on a comprehensive audit plan that is reviewed and reported to its CCPs Competent Authority at least annually. A CCP should also ensure that audits may be performed on an event-driven basis at short notice.[30]	the DCO.[80] Under proposed CFTC Rules, a DCO must make public the lines of responsibility and accountability for each operational unit of the DCO.[81] • ***Remuneration policy***. The board of directors or the senior officer must approve the compensation of the chief compliance officer.[82] Under proposed CFTC Rules, the compensation of the Public Directors and other non-executive members of the board must not be linked to the performance of the DCO.[83] • ***Information technology systems***. A DCO must establish and maintain resources that allow for the fulfilment of each obligation and responsibility of the DCO in light of the risks identified.[84] A DCO must (i) have automated systems, that are	(ii) overseeing an adequately and competently staffed internal audit department which reviews, monitors and evaluates the CA's system of internal accounting control;[151] (iii) continually considering, and advising the board of, the impact that new or expanded services or volume increases would have on the CA's processing capacity;[152] and, (iv) performing periodic risk assessments of the CA's operations and its automatic data processing systems and facilities and provide the board or its designee with the risk assessment reports.[153] Under SEC guidance, CAs should be organised in a manner that effectively establishes operational and audit controls while fostering director independence.[154] The CA's internal audit department must maintain objectivity		

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A CCP's clearing operations, risk management processes, internal control mechanisms and accounts must be subject to independent audit at least annually.[31]	reliable, secure, and have adequate scalable capacity; (ii) establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allows for (A) the timely recovery and resumption of operations of the DCO; and (B) the fulfilment of each obligation and responsibility of the DCO; and (iii) periodically conduct tests to verify that the backup resources of the DCO are sufficient to ensure daily processing, clearing, and settlement.[85] A DCO must periodically verify that resources are adequate to ensure daily processing, clearing, and settlement.[86] A DCO must follow generally accepted standards and industry best practices with respect to the development, operation, reliability, security, and capacity of automated systems.[87] Under proposed CFTC	in the performance of its duties and should report periodically to the audit committee, in addition to performing its on-going responsibilities to management.[155] • ***Remuneration policy***. Under proposed SEC Rules, a CA must designate a chief compliance officer, whose compensation and removal must require the approval of a majority of the CA's board.[156] • ***Information technology systems***. A CA must establish, implement, maintain and enforce written policies and procedures reasonably designed to: identify sources of operational risk and minimise them through the development of appropriate systems, controls, and procedures; implement systems that are reliable, resilient and secure and have adequate, scalable capacity; have business continuity plans		

Description of the provision in Title IV of EMIR	Description of the corresponding CFTC provisions for DCOs	Description of the corresponding SEC provisions	Description of corresponding CFTC provisions for SIDCOs and Opt-In DCOs[1]	Assessment of Equivalence
	Rules, a DCO must establish and maintain written procedures on safeguarding non-public information gained through either ownership interest or through the performance of official duties (including duties associated with self-regulatory or regulatory purposes) by members of its board of directors, members of any committee, or officers and other employees.[88] • ***Disclosure***. A DCO must disclose publicly and to the CFTC: (i) under proposed CFTC Rules, its governance arrangements (as described below),[89] (ii) its rulebook[90] (including default rules,[91] admission and continuing participation requirements for clearing members,[92] the terms, conditions, daily settlement prices, volume, and open interest of each contract cleared and settled by the DCO, and each clearing and other fee that	that allow for timely recovery of operations and fulfilment of the CA's obligations; and, evaluate the potential sources of risks that can arise when the CA establishes links either cross-border or domestically to clear or settle trades, and ensure that the risks are managed prudently on an on-going basis.[157] Under SEC guidance, a CA must have a written contingency plan that covers off-site storage of up-to-date, duplicative software, files and critical forms and supplies needed for processing operations.[158] Under proposed SEC Rules, a CA must establish, implement, maintain, and enforce written policies and procedures reasonably designed to protect the confidentiality of any and all transaction information that the CA receives.[159] Under SEC guidance, the application		

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	the DCO charges the members and clearing members of the DCO[93]), (iii) the margin-setting methodology and the size and composition of the financial resource package of the DCO,[94] (iv) a list of all current clearing members,[95] and (v) any other matter relevant to participation in the settlement and clearing activities of the DCO.[96] A DCO's filing of new rules and rule amendments for CFTC review and approval and new rules and rule amendments pursuant to the self-certification procedures must be treated as public information unless accompanied by a request for confidential treatment.[97] Under proposed CFTC Rules, a DCO must make the following information available to the public: (i) the charter (or mission statement) of the DCO; (ii)	of conventional preventive measures to automatic data processing operations should be augmented by measures designed to assure software integrity, such as stringent quality assurance procedures (including pre-implementation review and testing of new applications, operating systems and components), full documentation of systems design and modifications, requirements for executive approval to modify or update software and periodic post-implementation systems testing to determine conformity to latest system design specifications, data accuracy and the adequacy of accounting controls. In addition, the accuracy of data files should be verified periodically.[160] • Under proposed SEC Rules, a CA must establish policies and procedures		

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	the charter (or mission statement) of the DCO's board of directors, each committee with a composition requirement (including any Executive Committee), as well as each other committee that has the authority to amend or constrain actions of the board of directors; (iii) the board of directors nomination process for the DCO, as well as the process for assigning members of the board of directors or other persons to any committee referenced in (ii); (iv) for the board of directors and each committee referenced in (ii), the names of all members; (v) the identities of all Public Directors and all representatives of customers; (vi) the lines of responsibility and accountability for each operational unit of the DCO; and (vii) summaries of significant decisions implicating the public	relating to the capacity, integrity, resiliency and security of its technology systems, establish policies and procedures to ensure its systems operate in the manner intended, including in compliance with relevant federal securities laws and rules, take timely corrective action in response to systems disruptions, systems compliance issues and systems intrusions and notify and provide the SEC with detailed information when such systems issues occur as well as when there are material changes in its systems. Written notices would be filed electronically on new Form SCI. [161] • ***Disclosure***. A CA must make information relating to the following available to the public free of charge: annual audited financial statements, participation requirements and key aspects of the CA's default procedures.[162] Because CAs are SROs, their		

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	interest.[98] • ***Auditing***. A DCO must establish a risk management framework that, among other requirements, provides a mechanism for internal audit.[99] A DCO must establish a chief compliance officer who must prepare and sign a written report that covers the most recently completed fiscal year of the DCO and provide it to the board of directors or the senior officer and then to the CFTC. The report must: (i) contain a description of written policies and procedures, including the code of ethics and conflict of interest policies; (ii) review each core principle and applicable CFTC regulation, and with respect to each (a) identify the compliance policies and procedures that are designed to ensure compliance with the core principle, (b) provide an	rules are published by the SEC and are generally available on each CA's website.[163] Proposed rule changes must be filed with the SEC and publicly disclosed.[164] A CA must establish, implement, maintain and enforce written policies and procedures reasonably designed to provide market participants with sufficient information for them to identify and evaluate the risks and costs associated with using its services.[165] A CA must establish, implement, maintain and enforce written policies and procedures reasonably designed to have governance arrangements that are transparent and provide market participants with sufficient information for them to identify and evaluate the risks and costs associated with		

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	assessment as to the effectiveness of these policies and procedures, and (c) discuss areas for improvement, and recommend potential or prospective changes or improvements to the DCO's compliance program and resources allocated to compliance; (iii) list any material changes to compliance policies and procedures since the last annual report; (iv) describe the financial, managerial, and operational resources set aside for compliance with the CEA and CFTC regulations; and (v) describe any material compliance matters, including incidents of noncompliance, since the date of the last annual report and describe the corresponding action taken.[100] A DCO's risk management framework must be regularly reviewed and	using its services.[166] The SEC believes that the CA's rulebook, the costs of its services, a description of netting and settlement activities it provides, procedures relating to clearing members' rights and obligations, information regarding its margin methodology, and information regarding the "extreme but plausible" scenarios that the CA uses to stress test its financial resource are among the categories of information that clearing members could use to identify and evaluate risks and costs associated with use of the CA.[167] Under proposed SEC Rules, a CA must inform its members or clearing members about certain systems problems and provide information about the systems and market participants affected by the problem and the progress of corrective		

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	updated as necessary.[101] DCO risk management must be subject to internal audit (see the first paragraph above). The chief compliance officer must prepare the above report annually.[102] A DCO's system for generating initial margin requirements, including its theoretical models, must be reviewed and validated by a qualified and independent party on a regular basis. Such qualified and independent parties may be independent contractors or employees of the DCO but must not be persons responsible for development or operation of the systems and models being tested.[103] Audited financial statements must also be provided to the CFTC annually.[104]	action. [168] Under proposed SEC Rules, an SBS CA must provide to the public on reasonable, non-discriminatory terms all end-of-day settlement prices and any other prices with respect to SBS that the CA may establish to calculate mark-to-market margin requirements for its clearing members and any other pricing or valuation information with respect to SBS as is published or distributed by the CA to its clearing members.[169] • ***Auditing***. A CA must post on its website its annual audited financial statements audited by a registered public accounting firm that is qualified and independent.[170] Under SEC guidance, a CA should have an adequately and competently staffed internal audit department which reviews, monitors and evaluates the CA's		

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		system of internal accounting control.[171] The CA's internal audit department must maintain objectivity in the performance of its duties and should report periodically to the audit committee, in addition to performing its on-going responsibilities to management.[172] A CA should (1) establish and maintain an adequate system of internal accounting control, including the plan of organisation and the procedures and records that are concerned with the safeguarding of assets and the reliability of financial records, (2) furnish annually to clearing members audited financial statements and furnish quarterly to clearing members on request unaudited financial statements, and (3) furnish annually to clearing members an opinion report prepared		

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		by its independent public accountant based on a study and evaluation of the CA's system of internal accounting control for the period since the last such report. A CA should have detailed plans to assure the physical safeguarding of securities and funds, the integrity of the automatic data processing system and the recovery under a variety of contingencies from loss or destruction of securities, funds or data.[173] Under SEC guidance, an internal audit department's effectiveness depends on its ability to act as a separate level of control in reviewing and evaluating the CA's internal accounting controls during development and, thereafter, in studying and evaluating them and the operation of the entire system of internal accounting control.[174] The department should seek		

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		assurance that, in the development of new services or change in operations of the CA, the accounting controls are adequate and appropriate under the circumstances.[175] SEC Rules require a model validation review annually and that the reviewer be qualified and free from influence from the persons responsible for development or operation of the systems and models being validated.[176]		
Senior Management and the board The senior management of a CCP must be of sufficiently good repute and have sufficient experience to ensure the sound and prudent management of the CCP.[186] A CCP must have a board. At least one third, and no less than two, members of the	***Senior Management and the board*** A DCO must specify and enforce appropriate fitness standards for directors, members of any disciplinary panel, members of any disciplinary committee, and any other persons with direct access to its settlement or clearing activities, including	***Senior Management and the board*** As part of the registration process, CAs must identify senior management, identify their areas of responsibility and describe their experience over the previous 5 years.[208] Under proposed SEC Rules, a CA would be required to establish governance	***Senior Management and the board*** Under proposed CFTC rules, board members and managers must have appropriate experience, skills, incentives and integrity; and risk management personnel must have sufficient independence, authority, resources and access to the board of directors; and the board of direc-	***Senior Management and the board*** ***CFTC - DCOs.*** *The CFTC regime for DCOs includes requirements for senior management and the board which are applicable, at a jurisdictional level, to DCOs subject to regulation by the CFTC, and which are broadly equivalent to those of EMIR.* Even though the disqualifying circumstances for Public Directors of

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board must be independent. [187] "Independent member" of the board means a member of the board who has no business, family or other relationship that raises a conflict of interests regarding the CCP concerned or its controlling shareholders, its management or its clearing members, and who has had no such relationship during the five years preceding his membership of the board.[188] All members of a CCP's board (including independent directors) must be of good repute and have adequate expertise in financial services, risk management and clearing services.[189] Representatives of Clients must be invited to board meetings for matters relating to transparency and segregation requirements. The compensation of independent and other non-executive board members may not be linked to the business performance of the CCP. A CCP's board's roles and responsibilities should be	affiliated parties.[192] At a minimum, fitness standards must include the absence of (i) bases upon which the CFTC may refuse to register a person[193] and (ii) a significant history of serious disciplinary offenses.[194] Under proposed CFTC Rules, a Public Director is a member of the board of directors of a DCO who has been found by the board of directors, on the record, to have no "material relationship" with the DCO. A "material relationship" is one that reasonably could affect the independent judgment or decision-making of the Director. The board of directors must make such finding upon nomination and as often as necessary in light of all circumstances relevant to such director, but in no case less than annually. The director or an immediate family member must not have such a material relationship during the preceding year.[195]	standards for its board members and board committee member that must address (i) director qualifications providing criteria for expertise in the securities industry, clearance and settlement of securities transactions, and financial risk management, and (ii) disqualifying factors concerning serious legal misconduct, including violations of the Federal securities laws.[209] Under proposed SEC Rules: "independent director" means a director who has no relationship, compensatory or otherwise, which reasonably could affect independent judgment or decision-making, with: (1) the SBS CA; (2) any affiliate of the SBS CA; (3) a clearing member in the SBS CA; or (4) any affiliate of a clearing member in	tors must include members who are not executives, officers or employees of the SIDCO or Opt-In DCO or of its affiliates.[222] Under proposed CFTC rules, the rules and procedures of a SIDCO or Opt-In DCO must: (1) describe the SIDCO's management structure; (2) clearly specify the roles and responsibilities of the board of directors and its committees, including the establishment of a clear and documented risk management framework; (3) clearly specify the roles and responsibilities of management; (4) establish appropriate compensation policies; (5) establish procedures for managing conflicts of interest among board members; and (6) assign responsibility and accountability for risk decisions and for implementing rules concerning default, recovery, and wind-down[223].	DCOs are subject to a one-year look back, and disqualifying relationships for independent members of a CCP under EMIR must not have occurred in the five years preceding membership of the board, the CFTC provisions when combined with those on fitness standards should reach the same objective which is to have fit and proper management. The CFTC regime does not require all minutes of DCO board meetings to be made available to the CFTC, however records of action items and dissenting views must be provided to the CFTC. On balance, these differences do not undermine the consistency of the objectives of the CFTC and EMIR regimes. ***SEC.*** *The SEC regime for CAs includes requirements for senior management and the board which are applicable, at a jurisdictional level, to CAs subject to regulation by the SEC, and which are broadly equivalent to those of EMIR.* EMIR specifically requires that at least one third, and no fewer than two, members of the board are independent and, SEC guidance prescribes that a CA's

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clearly defined. Minutes of board meetings should be made available to a CCP's competent authority.[190] A CCP's governance arrangements must ensure that the board assumes final responsibility and accountability for managing the CCP's risks. The board must define, determine and document an appropriate level of risk tolerance and risk bearing capacity; the board and senior management must ensure that the CCP's policies, procedures and controls are consistent with such levels.[191]	Under proposed CFTC Rules, • The board of directors of a registered DCO must be composed of at least thirty-five percent, but no less than two, Public Directors.[196] • The members of the board of directors, including Public Directors, must be of sufficiently good repute and, where applicable, have sufficient expertise in financial services, risk management, and clearing services.[197] The board of directors must be composed of at least ten percent representatives of customers (*i.e.*, any customer of a clearing member).[198] The compensation of the Public Directors and other non-executive members of the board must not be linked to the perfor-	the SBS CA. The director or an immediate family member must not have such a material relationship during the preceding three years.[210] No director may qualify as an independent director unless the board affirmatively determines that the director does not have a material relationship with the SBS CA or any affiliate of the SBS CA, or a clearing member in the SBS CA, or any affiliate of a clearing member in the SBS CA.[211] The SBS CA must establish policies and procedures to require each director, on his or her own initiative or upon request of the SBS CA, to inform the SBS CA of the existence of any		audit committee be composed of non-management directors, and, under proposed SEC rules, a CA clearing SBS would be required to have a board with either 35% independent directors or a majority of independent directors (with no minimum number specified). Even though a CA is not specifically required to invite representatives of clients to board meetings for matters relating to transparency and segregation requirements; however, to be registered with the SEC the rules of a CA must assure a fair representation of its shareholders and clearing members in the selection of its directors and administration of its affairs. While a CA is not specifically required to ensure that compensation of independent and other non-executive board members is not linked to the business performance of the CCP; under proposed SEC Rules, independent directors may not have received during any 12 month period within the last three years payments that reasonably could affect the independent judgment or decision making of the director. Even though a CA is not specifically required to make minutes of board meetings available to the SEC on a routine basis; a CA must maintain

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	mance of the DCO.[199] • The roles and responsibilities of the board of directors must be clearly articulated,[200] and each DCO must make summaries of significant decisions implicating the public interest available to the public and relevant authorities, including the CFTC.[201] Resolutions of the DCO's board are considered rules of the DCO and must be provided to the CFTC.[202] A DCO must also provide to the CFTC a summary of opposing views expressed by board or committee members that are not incorporated into a rule, or a statement that no such opposing views were expressed.[203] A DCO must specify and enforce appropriate fitness standards for directors which, under proposed CFTC Rules, must include at minimum, (i) those bases for refusal to	relationship or interest that may reasonably be considered to bear on whether such director is an independent director.[212] Under SEC guidance, a director is non-management for the purpose of serving on a CA audit committee if the director (i) is not associated with the CA (other than in a user capacity), any self-regulatory organisation or other entity affiliated with the CA (other than in a non-management capacity) or any entity which furnishes securities processing services to the CA and (ii) is free from any other relationship that, in the opinion of the CA's board of directors, would interfere with the director's exercise of independent judgment.[213] Proposed SEC Rules would require an SBS CA to choose between two governance requirements, **either**: • The board must be composed of at least		copies of all records created in the course of its business and, upon request of any representative of the SEC, promptly provide copies of any documents required to be kept and preserved by it. EMIR requires a CCP's board to define, determine and document an appropriate level of risk tolerance and risk bearing capacity and the board and senior management to ensure policies, procedures and controls are consistent with those levels. In the same spirit, the SEC regime requires CAs to implement policies to identify and minimise specific risks and, under SEC guidance, a CA's board should more generally oversee management's performance of its on-going duties to assure both the operational capability and the integrity of the CA. On balance, these differences do not undermine the consistency of the objectives of the SEC and EMIR regimes. ***CFTC – SIDCOs and Opt-In DCOs.*** *Taken in conjunction with the corresponding CFTC provisions for DCOs, the CFTC regime for SIDCOs and Opt-In DCOs includes requirements for*

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	register a person under CEA Section 8a(2) and (ii) the absence of a significant history of serious disciplinary offenses, such as those that would be disqualifying under CFTC Regulation 1.63.[204] A DCO must ensure that the composition of the governing board or committee of the DCO includes market participants.[205] A DCO's board of directors must approve policies, procedures, and controls that establish an appropriate risk management framework which, at a minimum, clearly identifies and documents the range of risks to which the DCO is exposed, addresses the monitoring and management of the entirety of those risks, and provides a mechanism for internal audit.[206] Proposed CFTC Rules require a risk management committee and provide for reports if the DCO board overrules the risk committee.[207]	35 percent independent directors; • A clearing member, together with related persons, cannot beneficially own or vote or cause the vote of more than 20% of the SBS CA's voting interest and clearing members, together with related persons, in the aggregate cannot beneficially own or vote or cause the vote of more than 40% of the voting interest; • The Nominating Committee of the board must have a majority of independent directors; and • Other committees authorised to act on behalf of the board must have at least 35% independent directors.[214] **OR** • The board must be		*senior management and the board which are applicable, at a jurisdictional level, to SIDCOs and Opt-In DCOs subject to regulation by the CFTC, and which are broadly equivalent to those of EMIR.*

Description of the provision in Title IV of EMIR	Description of the corresponding CFTC provisions for DCOs	Description of the corresponding SEC provisions	Description of corresponding CFTC provisions for SIDCOs and Opt-In DCOs[1]	Assessment of Equivalence
		composed of a majority of independent directors; • A clearing member, together with related persons, cannot beneficially own or vote or cause the vote of more than 5% of the SBS CA's voting interest; • The Nominating Committee must be 100% independent directors; and Other committees authorised to act on behalf of the board must have a majority of independent directors.[215] Under SEC guidance, a CA's audit committee should be composed of non-management directors who will devote sufficient time to the work of the committee and who are qualified to discharge effectively the committee's responsibilities.[216] Under proposed SEC Rules, a CA must establish governance standards for its board members and board		

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		committee members. Such standards must address at least the following areas: (1) a clear articulation of the roles and responsibilities of directors serving on the CA's board and any board committees; (2) director qualifications providing criteria for expertise in the securities industry, clearance and settlement of securities transactions, and financial risk management; (3) disqualifying factors concerning serious legal misconduct, including violations of the Federal securities laws; and (4) policies and procedures for the periodic review by the board or a board committee of the performance of its members.[217] Independent directors of an SBS CA may not have received during any 12 month period within the last three years payments that reasonably could affect the independent judgment or decision making of the director.[218] Under the Exchange Act, the rules of a CA must assure a		

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		fair representation of its shareholders (or members) and clearing members in the selection of its directors and administration of its affairs.[219] Under SEC guidance, CA management must supervise the establishment, maintenance and updating of safeguards and report periodically to the board or its designee concerning strengths and weaknesses in the CA's system of safeguards. Such "safeguards" include (1) the organisation and capacity to safeguard securities and funds and clear and settle transactions promptly and accurately, (2) the rules designed to achieve those objectives and (3) the overall management responsibility of assuring the integrity and accuracy of CA automatic data processing operations.[220] Under SEC guidance, CA management should perform periodic risk assessments of the CA's operations and its automatic data processing systems and facilities and		

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		provide the board or its designee with the risk assessment reports.[221]		
Risk committee All CCPs must establish a risk committee, composed of representatives of its Clearing Members, independent members of the board and representatives of its Clients. None of these groups may have a majority of members. CCPs Competent Authorities may request to attend risk committee meetings, and be informed of the risk committee's activities and decisions.[224] The risk committee should be chaired by an independent member of the board, hold regular meetings and report directly to the board.[225] The risk committee must advise the board on any arrangements that may impact the risk management of the CCP. The risk committee's advice must be independent of any direct influence by the management of the CCP.[226] A	***Risk committee*** Under proposed CFTC Rules, a DCO must have a Risk Management Committee that must be composed of at least thirty-five percent Public Directors and at least ten percent representatives of customers, with the chairman a Public Director. The remaining members may be representatives of clearing members but not employees of the DCO. The Risk Management Committee reports to the DCO's board and at a minimum (i) advises the board on significant changes to the DCO's risk model and default procedures; (ii) determines clearing membership eligibility standards; (iii) approves/denies clearing membership applications; (iv) determines eligible products; and (v) reviews performance of the chief compliance officer and makes recommendations	***Risk committee*** Under proposed SEC Rules, a CA's committees (including a risk committee), if authorised to act on behalf of the board, must have at least a specified percentage of independent directors.[229] Under the Exchange Act, the rules of a CA must assure a fair representation of its shareholders (or members) and clearing members in the selection of its directors and administration of its affairs.[230]	***Risk committee*** No corresponding provisions.	***Risk committee*** ***CFTC - DCOs.*** *The CFTC regime for DCOs includes risk committee requirements. Based on a review of the legally binding requirements which are applicable, at a jurisdictional level, to DCOs subject to regulation by the CFTC, these requirements are not equivalent to those of EMIR. However, the internal policies, procedures, rules, models and methodologies of individual DCOs, which are out of the scope of this assessment, may contain legally binding provisions equivalent to those of EMIR.* Under proposed CFTC Rules, a DCO's Risk Management Committee must be composed of at least 35% Public Directors and at least 10% representatives of customers, whereas under EMIR a CCP's risk committee must be composed of clearing members, independent members of the board and representatives of clients, with each composing less than a majority of the

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CCP must promptly inform the competent authority of any decision in which the board decides not to follow the advice of the risk committee.	with respect thereto to the board.[227] Under proposed CFTC Rules, if a DCO's board rejects a recommendation or supersedes an action of the Risk Management Committee or the Risk Management Committee rejects a recommendation or supersedes an action of its subcommittee, the DCO must submit a written report to the CFTC detailing: (i) the recommendation or action, (ii) the rationale for the recommendation or action, (iii) the rationale of the board or Risk Management Committee for rejecting the recommendation or superseding the action, and (iv) the course of action that the board or the Risk Management Committee decided to take contrary to the recommendation or action.[228]			committee. The CFTC regime does not require that the risk committee include clients on the risk committee, which is one of the policy objectives of EMIR. ***SEC.*** *The SEC regime for CAs includes risk committee requirements. Based on a review of the legally binding requirements which are applicable, at a jurisdictional level, to CAs subject to regulation by the SEC, these requirements are not equivalent to those of EMIR. However, the internal policies, procedures, rules, models and methodologies of individual CAs, which are out of the scope of this assessment, may contain legally binding provisions equivalent to those of EMIR.* EMIR specifically requires CCPs to establish a risk committee that meets specified composition and procedural requirements. In contrast, the SEC regime does not specifically require CAs to establish a risk committee. Nonetheless, under proposed SEC rules, any risk committee, if authorised to act on behalf of the board, must have at least a specified percentage of independent directors. A CA is not specifically required to

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				permit the SEC to attend risk committee meetings or promptly inform the SEC of any decision in which the board decides not to follow the advice of the risk committee. ***CFTC – SIDCOs and Opt-In DCOs.*** *Taken in conjunction with the corresponding CFTC provisions for DCOs, the CFTC regime for SIDCOs and Opt-In DCOs includes risk committee requirements. Based on a review of the legally binding requirements which are applicable, at a jurisdictional level, to SIDCOs and Opt-In DCOs subject to regulation by the CFTC, these requirements are not equivalent to those of EMIR. However, the internal policies, procedures, rules, models and methodologies of individual SIDCOs and Opt-In DCOs, which are out of the scope of this assessment, may contain legally binding provisions equivalent to those of EMIR.*
Record keeping A CCP must maintain, for at least 10 years, records relating to the services and activities it provides which are sufficient to enable its CCPs Competent Authority to monitor the CCP's compliance with	***Record keeping*** • ***General requirements***.No corresponding provisions. • ***Transaction records***. No corresponding provi-	***Record keeping*** • A CA must, upon request of any representative of the SEC, promptly furnish to such representative copies of any documents required to be kept and	***Record keeping*** • ***General requirements***.No corresponding provisions. • ***Transaction records***. No corresponding provi-	***Record keeping*** ***CFTC - DCOs.*** *The CFTC regime for DCOs includes record keeping requirements which are applicable, at a jurisdictional level, to DCOs subject to regulation by the CFTC, and which are broadly equivalent to those of EMIR.* A DCO's record retention requirement is

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EMIR.[231] A CCP must maintain, for at least 10 years following the termination of a contract, all information relating to that contract (including sufficient information to enable the CCP to identify the original terms of that contract pre-clearing).[232] • ***General requirements***. Such records must be available upon request to the competent authorities, ESMA and the relevant members of the ESCB. [233] Records kept by CCPs should facilitate a thorough knowledge of CCPs' credit exposure towards Clearing Members and allow monitoring of the implied risk. They should enable Competent Authorities, ESMA and the relevant members of the ESCB to adequately re-construct the clearing process, in order to assess compliance with regulatory	sions. • ***Business records.*** No corresponding provisions. • ***Business records and Records of data reported to a trade repository***. A DCO must maintain records of all activities related to the business of the DCO as a DCO in a form and manner that is acceptable to the CFTC for at least 5 years[239] or, in the case of swap data, in accordance with the requirements of CFTC Part 45 Regulations, which governs reporting to, and maintenance by, swap data repositories of swap data.[240] All such records must be open to inspection by any representative of the CFTC or the United States Department of Justice.[241] • A DCO must maintain records of:	preserved by it.[250] • ***General requirements***.No corresponding provisions. • ***Transaction records***. No corresponding provisions. • ***Business records.*** A CA must keep and preserve, for a period of not less than five years, the first two years in an easily accessible place, at least one copy of all documents, including all correspondence, memoranda, papers, books, notices, accounts, and other such records as must be made or received by it in the course of its business as such and in the conduct of its self-regulatory activity.[251] In addition to maintaining all records made or received in the course of its business, a CA must maintain:	sions. • ***Business records.*** No corresponding provisions. • ***Business records.*** No corresponding provisions. • ***Records of data reported to a trade repository***. No corresponding provisions.	5 years, whereas under EMIR a CCP must maintain records for at least 10 years, however on balance, this gap does not undermine the consistency of objectives between the CFTC and EMIR regimes. ***SEC.*** *The SEC regime for CAs includes record keeping requirements which are applicable, at a jurisdictional level, to CAs subject to regulation by the SEC, and which are broadly equivalent to those of EMIR.* A CA's record keeping requirement is 5 years, whereas under EMIR a CCP must maintain records for at least 10 years. EMIR includes more detail and specifically requires CCPs to keep records of their credit exposure, all transactions they clear, and positions held by clearing members, whereas the SEC regime more generally requires a CA to maintain all records made or received by it in the course of its business. However, on balance, these gaps do not undermine the consistency of objectives between the SEC and EMIR regimes. ***CFTC – SIDCOs and Opt-In DCOs.*** *Taken in conjunction with the corresponding CFTC provisions for DCOs,*

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requirements.[234] • ***Transaction records***. A CCP must maintain records of all transactions in all contracts it clears, including sufficient information to comprehensively and accurately reconstruct the clearing process for each contract;[235] • ***Position records***. A CCP must maintain records of all positions held by each Clearing Member, including sufficient information to comprehensively and accurately reconstruct the transactions that established the position. Separate records must be kept for each account held for a Clearing Member on an "omnibus client segregation" and "individual client segregation" basis;[236] • ***Business records***. A CCP must maintain records of all activities relating to its business and internal organisation	o All rules and procedures required to be submitted to the CFTC pursuant to CFTC Part 39 and Part 40 Regulations, including all proposed changes in rules, procedures or operations subject to CFTC Regulation 40.10;[242] o Any data or documentation required to be submitted to the DCO by its clearing members or any other person in connection with the DCO's clearing and settlement activities;[243] o A copy of all compliance policies and procedures and all other policies and procedures adopted in furtherance of compliance with the CEA and CFTC regulations;[244] o Copies of materials,	Each fiscal quarter, or at any time upon SEC request, a CA that performs CCP services must calculate and maintain a record of its financial resource requirement and must maintain sufficient documentation to explain the methodology it uses to compute such financial resource requirement.[252] Under proposed SEC Rules, SBS CAs must retain information relating to voting interests in the SBS CA for the periods specified above.[253] • ***Records of data reported to a trade repository***. No corresponding provisions.		*the CFTC regime for SIDCOs and Opt-In DCOs includes record keeping requirements which are applicable, at a jurisdictional level, to SIDCOs and Opt-In DCOs subject to regulation by the CFTC, and which are broadly equivalent to those of EMIR.*

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(which must be updated every time there is a material change to the relevant document);[237] and • ***Records of data reported to a trade repository***. A CCP must maintain records of all information and data required to be reported to a trade repository (including time and date reported).[238]	including written reports provided to the board of directors or the senior officer in connection with the review of the chief compliance officer's annual report;[245] and o Any records relevant to the chief compliance officer's annual report, including, but not limited to, work papers and other documents that form the basis of the report, and memoranda, correspondence, other documents, and records that are created, sent, or received in connection with the annual report and contain conclusions, opinions, analyses, or financial data related to the annual report.[246] • ***Transaction records and Position records.*** A DCO is required to			

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	maintain records of margin calculations and levels, settlement prices, data collected in connection with clearing and settlement activities, and any records relevant to the chief compliance officer's annual report. • A DCO must maintain records of: o All cleared transactions, including swaps;[247] o All information necessary to record allocation of bunched orders for cleared swaps;[248] and o All information required to be created, generated, or reported under CFTC Part 39 Regulations, including but not limited to the results of and meth-			

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	odology used for all tests, reviews, and calculations in connection with setting and evaluating margin levels, determining the value and adequacy of financial resources, and establishing settlement prices.[249]			
Shareholders and members with qualifying holdings A Competent Authority must not authorise a CCP unless it has been informed of the identities of the CCP's shareholders or members (whether direct or indirect, natural or legal persons) which have qualifying holdings[254] ("Qualifying Shareholders").[255] A Competent Authority must refuse authorisation if it is not satisfied of the suitability of Qualifying Shareholders, taking into account the need to ensure the sound and	***Shareholders and members with qualifying holdings*** When applying for registration with the CFTC, a DCO must attach a list of the names of any person (i) who owns 5% or more of the DCO's stock or other ownership or equity interests, or (ii) who, either directly or indirectly, through agreement or otherwise, may control or direct the management or policies of the DCO.[260] Under proposed CFTC Rules, a DCO must specify and enforce fitness standards for natural persons who, directly	***Shareholders and members with qualifying holdings*** When applying for registration with the SEC, a CA must list any person who either directly or indirectly, through agreement or otherwise, may control or direct the management or policies of registrant.[263] Under proposed SEC Rules, an SBS CA must ensure that a clearing member, together with related persons, cannot beneficially own or vote or cause the vote of more than specified percentage of the SBS CA's voting interest.[264]	***Shareholders and members with qualifying holdings*** No corresponding provisions.	***Shareholders and members with qualifying holdings*** ***CFTC – DCOs.*** *The CFTC regime for DCOs includes requirements for shareholders with qualifying holdings which are applicable, at a jurisdictional level, to DCOs subject to regulation by the CFTC, and which are broadly equivalent to those of EMIR.* DCOs must disclose the identity of any shareholder who directly owns 5% or more of the DCO's issued shares or other ownership instruments or who may otherwise, directly or indirectly, control the management of the DCO, whereas under EMIR CCPs must disclose the identities of shareholders with ownership of at least 10% of the CCP's voting rights or capital.

Description of the provision in Title IV of EMIR	Description of the corresponding CFTC provisions for DCOs	Description of the corresponding SEC provisions	Description of corresponding CFTC provisions for SIDCOs and Opt-In DCOs[1]	Assessment of Equivalence
prudent management of the CCP.[256] If a CCP's Qualifying Shareholders exercise influence over it which is likely to be prejudicial to the CCP's sound and prudent management, the Competent Authority must take appropriate measures to remedy the situation (including by withdrawing the CCP's authorisation).[257] A Competent Authority must not authorise a CCP with close links to other natural or legal persons if: • those links prevent the effective exercise of the Competent Authority's supervisory functions;[258] or • (i) the laws, regulations or administrative provisions of a third country which apply to such persons, or (ii) difficulties associated with the enforcement of such provisions, prevent	or indirectly, own greater than 10% of any one class of equity interest in the DCO. At a minimum, these standards must include the bases for refusal to register a person under CEA Section 8a(2).[261] A DCO must collect and verify information that supports compliance with this requirement and provide that information to the CFTC on an annual basis.[262]			The CFTC is not specifically required to refuse to register a DCO if the CFTC is not satisfied with the suitability of the owners disclosed by the DCO and the CFTC is not specifically required to refuse to register a DCO with close links to other natural or legal persons that prevent the effective exercise of the CFTC's supervisory functions, however on balance, these gaps do not undermine the consistency of objectives between the CFTC and EMIR regimes. ***SEC.*** *The SEC regime for CAs includes requirements for shareholders with qualifying holdings which are applicable, at a jurisdictional level, to CAs subject to regulation by the SEC, and which are broadly equivalent to those of EMIR.* Under proposed SEC Rules, CAs clearing SBS must retain information relating to voting interests and the SEC would impose restrictions on ownership percentages for clearing members and related persons. The SEC is not specifically required to refuse to authorise a CA if it is not satisfied of the suitability of those who control it, and the SEC is not specifically required to refuse to authorise a CA with close links to other natural or legal persons that prevent the effective

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the effective exercise of the Competent Authority's supervisory functions.[259]				exercise of the SEC's supervisory functions, however on balance, these gaps do not undermine the consistency of objectives between the SEC and EMIR regimes. ***CFTC – SIDCOs and Opt-In DCOs.*** *Taken in conjunction with the corresponding CFTC provisions for DCOs, the CFTC regime for SIDCOs and Opt-In DCOs includes requirements for shareholders with qualifying holdings which are applicable, at a jurisdictional level, to SIDCOs and Opt-In DCOs subject to regulation by the CFTC, and which are broadly equivalent to those of EMIR.*
Information to competent authorities • ***Changes to Management.*** A CCP must report to its CCPs Competent Authority any changes to its management, and must provide the competent authority with all the information necessary to assess the compli-	***Information to competent authorities*** A DCO must provide to the CFTC all information that the CFTC determines to be necessary to conduct oversight of the DCO.[271] • ***Changes to Management.*** A DCO must notify the CFTC no later than two business days follow-	***Information to competent authorities*** CAs must submit to the SEC for approval changes to any material aspect of the operation of the facilities of the CA and changes to any standard, limit, or guideline with respect to the rights, obligations or privileges of its members or clearing members.[278] A CA that has	***Information to competent authorities*** • ***Changes to Management***. No corresponding provisions. • ***Changes to Shareholders***. No corresponding provisions.	***Information to competent authorities*** ***CFTC - DCOs.*** *The CFTC regime for DCOs includes requirements for the provision of information on qualifying holdings which are applicable, at a jurisdictional level, to DCOs subject to regulation by the CFTC, and which are broadly equivalent to those of EMIR.* When there are changes to a DCO's key personnel, the DCO must report to the

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ance of the new management with EMIR's obligations relating to the board and senior management of a CCP.[265] When the conduct of a member is likely to be prejudicial to the sound and prudent management of the CCP, the competent authority must take appropriate measures, which may include removing the member from the board.[266] • ***Changes to Shareholders.*** Any natural or legal person (or persons acting in concert) (the "proposed acquirer") who decides to (i) acquire a qualifying holding[267] in a CCP, or (ii) to increase a qualifying holding as a result of which (x) the proportion of voting rights or capital held would reach or exceed 10%, 20%, 30% or 50% or (y) the CCP would become the subsidiary of the proposed acquirer (the "proposed acquisition"), must first no-	ing the departure or addition of persons who are key personnel[272] and must submit a report that includes the name of the person who will assume the duties of the position on a temporary basis until a permanent replacement fills the position, as applicable.[273] Under proposed CFTC Rules, a DCO must have procedures to remove a member from the board, where the conduct of such member is likely to be prejudicial to the sound and prudent management of the DCO.[274] • ***Changes to Shareholders.*** Three months prior to any anticipated change in the ownership or organisational structure that would: (i) result in at least a 10 percent change of ownership, (ii) create a new subsidiary or eliminate a current subsidiary, or (iii) result in the transfer of all or substantially all of the assets of the	been designated as systemically important must provide an advance notice to the SEC of any proposed change to its rules, procedures, or operations that could materially affect the nature or level of risks it presents.[279] • ***Changes to Management***. No corresponding provisions. • ***Changes to Shareholders***. No corresponding provisions.		CFTC the name of any departure, addition or temporary replacement, whereas under EMIR a CCP must report all the information necessary for assessment of the compliance of the new management with EMIR's obligations. The CFTC is not expressly required to take appropriate measures when the conduct of a member is likely to be prejudicial to the sound and prudent management of a DCO; however, under proposed CFTC Rules, removal of personnel is the responsibility of the DCO. DCOs are not required to report to the CFTC all of the information regarding changes in shareholders that is contemplated by EMIR, but a DCO must report any change that would result in at least a 10% change of ownership. On balance, these differences do not undermine the consistency of the objectives of the CFTC and EMIR regimes. ***SEC.*** *The SEC regime for CAs includes requirements for the provision of information on qualifying holdings which are applicable, at a jurisdictional level, to CAs subject to regulation by the SEC, and which are broadly equivalent*

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tify the relevant CCPs Competent Authority and provide certain relevant information. Any natural or legal person (the "proposed vendor") who decides to (i) dispose of a qualifying holding, or (ii) reduce its qualifying holding as a result of which (x) the proportion of voting rights or capital held would fall below 10%, 20%, 30% or 50% or (y) the CCP would cease to be the subsidiary of the proposed vendor, must first notify the relevant CCPs Competent Authority and provide certain relevant information. Within two working days of receipt of the notifications referred to above, the CCPs Competent Authority must acknowledge receipt. Within a further 60 working days (the "assessment period") the	DCO, including its registration as a DCO, to another legal entity, the DCO must submit a report including: a chart outlining the new ownership or corporate or organisational structure; a brief description of the purpose and impact of the change; and any relevant agreements effecting the change and corporate documents such as articles of incorporation and bylaws.[275] In addition, a DCO is required to request from the CFTC a transfer of its registration in anticipation of a corporate change that will result in the transfer of all or substantially of the DCO's assets.[276] CFTC Rules provide that the CFTC will review a request for transfer as soon as practicable.[277]			*to those of EMIR.* While EMIR prescribes a range of specific reporting obligations, the SEC prescribes a general reporting requirement for any proposed change to the operation of facilities or to the rights, obligations or privileges of members or clearing members of a CA. CAs deemed systemically important must notify the SEC in advance of those changes to a CA's rules, procedures or operations that could materially affect the nature or level of risks the systemically important CA presents. The SEC's general reporting requirement covers many of the same reporting events that are provided for under EMIR for CCPs. On balance, these differences do not undermine the consistency of the objectives of the SEC and EMIR regimes. ***CFTC – SIDCOs and Opt-In DCOs.*** *Taken in conjunction with the corresponding CFTC provisions for DCOs, the CFTC regime for SIDCOs and Opt-In DCOs includes requirements for the provision of information on qualifying holdings which are applicable, at a jurisdictional level, to SIDCOs and Opt-*

Description of the provision in Title IV of EMIR	Description of the corresponding CFTC provisions for DCOs	Description of the corresponding SEC provisions	Description of corresponding CFTC provisions for SIDCOs and Opt-In DCOs[1]	Assessment of Equivalence
CCPs Competent Authority must assess the suitability of the proposed acquirer and the financial soundness of the proposed acquisition, in accordance with the criteria set out in EMIR, Art. 32.[268] Within the first 50 working days of the assessment period, the CCPs Competent Authority may request any further information necessary to complete the assessment.[269] If the CCPs Competent Authority decides to oppose the proposed acquisition, it must inform the proposed acquirer within two working days. If the CCPs Competent Authority does not oppose the proposed acquisition within the assessment period, the proposed acquisition must be deemed approved.[270]				*In DCOs subject to regulation by the CFTC, and which are broadly equivalent to those of EMIR.*

Description of the provision in Title IV of EMIR	Description of the corresponding CFTC provisions for DCOs	Description of the corresponding SEC provisions	Description of corresponding CFTC provisions for SIDCOs and Opt-In DCOs[1]	Assessment of Equivalence
Assessment of qualifying holdings When assessing the notifications referred to above, a CCPs Competent Authority must consider the suitability of the proposed acquirer and the financial soundness of the proposed acquisition against the following criteria, having regard to the likely influence of the proposed acquirer on the CCP: • the reputation and soundness of the proposed acquirer and any person who will direct the CCP's business as a result of the proposed acquisition (with particular regard to the type of business pursued by the CCP); • whether the CCP will be able to comply and continue to comply with EMIR (with particular regard to whether the corporate group which the CCP will enter post-acquisition has a structure which makes it possible for the	***Assessment of qualifying holdings*** CFTC Rules provide that the CFTC will approve or deny a request to transfer a DCO's registration pursuant to CFTC order, based on the CFTC's determination as to the transferee's ability to continue to operate the DCO in compliance with the CEA and the CFTC's regulations thereunder.[285]	***Assessment of qualifying holdings*** No corresponding provisions.	***Assessment of qualifying holdings*** No corresponding provisions.	***Assessment of qualifying holdings*** ***CFTC - DCOs.*** *The CFTC regime for DCOs includes requirements for the assessment of qualifying holdings which are applicable, at a jurisdictional level, to DCOs subject to regulation by the CFTC, and which are broadly equivalent to those of EMIR.* The CFTC is not expressly required to assess the suitability of proposed acquirers or the financial soundness of proposed acquisitions, but it is required to review any transfer of the DCO's assets and registration. On balance, these differences do not undermine the consistency of the objectives of the CFTC and EMIR regimes. ***SEC.*** *The SEC regime for CAs does not include requirements for the assessment of qualifying holdings, however the SEC regime applicable, at a jurisdictional level, to CAs subject to regulation by the SEC, is broadly equivalent to the one of EMIR.* The SEC is not specifically required to assess the suitability of proposed acquirers, the proposed SEC rules

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CCPs Competent Authority to exercise effective supervision, to exchange information with other Competent Authorities and to determine the allocation of responsibility among Competent Authorities); and • whether there are reasonable grounds to suspect that money laundering or terrorist financing is being or has been committed in connection with the proposed acquisition, or that the proposed acquisition could increase the risk thereof.[280] A Competent Authority may only oppose a proposed acquisition where (i) there are reasonable grounds for doing so on the basis of the criteria set out above, or (ii) the proposed acquirer has provided incomplete information.[281] Member States must not impose any conditions on the levels of holdings in CCPs that may be acquired, or allow				would, however, limit the percentage ownership by clearing members and related persons. On balance, these differences do not undermine the consistency of the objectives of the SEC and EMIR regimes. ***CFTC – SIDCOs and Opt-In DCOs.*** *Taken in conjunction with the corresponding CFTC provisions for DCOs, the CFTC regime for SIDCOs and Opt-In DCOs includes requirements for the assessment of qualifying holdings which are applicable, at a jurisdictional level, to DCOs subject to regulation by the CFTC, and which are broadly equivalent to those of EMIR.*

Description of the provision in Title IV of EMIR	Description of the corresponding CFTC provisions for DCOs	Description of the corresponding SEC provisions	Description of corresponding CFTC provisions for SIDCOs and Opt-In DCOs[1]	Assessment of Equivalence
their Competent Authorities to examine proposed acquisitions in terms of the economic needs of the market.[282] Member States must specify publicly the information necessary to carry out the assessment, which information must be (i) proportionate and appropriate to the nature of the proposed acquirer and acquisition, and (ii) limited to information relevant for a prudential assessment.[283] If the proposed acquirer is (i) another CCP, a credit institution, an assurance, insurance or reinsurance undertaking, an investment firm, a market operator, an operator of a securities settlement system, a UCITS management company or an AIFM authorised in another Member State, or (ii) the parent undertaking of or a natural or legal person controlling an entity specified in subparagraph (i), the relevant Competent Authorities must cooperate closely in carrying out the				

Description of the provision in Title IV of EMIR	Description of the corresponding CFTC provisions for DCOs	Description of the corresponding SEC provisions	Description of corresponding CFTC provisions for SIDCOs and Opt-In DCOs[1]	Assessment of Equivalence
assessment, and provide each other with all essential information (on their own initiative) and all relevant information (upon request) without undue delay.[284]				
Conflicts of interest A CCP must maintain effective written organisational and administrative arrangements[286] to identify and manage potential conflicts of interest between (i) itself, including its management, employees, and close associates, and (ii) its Clearing Members, including Clients of a Clearing Member which are known to the CCP. It must maintain and implement adequate procedures to resolve possible conflicts of interest.[287] If such arrangements are not sufficient to ensure that damage to the interests of a Clearing Member or Client are prevented, the CCP must clearly disclose the general nature or source of conflicts of interest to the Clearing Member (and, if known to the	***Conflicts of interest*** A DCO must (i) establish and enforce rules to minimise conflicts of interest in the decision-making process of the DCO; and (ii) establish a process for identifying and resolving conflicts of interest, which, under proposed CFTC Rules, must be done in a fair and non-biased manner.[290] The CFTC is required to adopt rules mitigating conflicts of interest in connection with the conduct of business by an SD or a MSP with a DCO that clears or trades swaps in which the SD or MSP has a material debt or material equity investment.[291] Under proposed CFTC Rules: • A DCO must not permit any member, together with any Related Persons of such member, to: (i)	***Conflicts of interest*** Under proposed SEC Rules, a CA must establish, implement, maintain and enforce policies and procedures reasonably designed to identify and address existing or potential conflicts of interest and to minimise conflicts of interest in CA decision making.[300] A CA's chief compliance officer's annual report provided to the board, the audit committee and the SEC must contain a description of policies and procedures, including the code of ethics and conflict of interest policies.[301] The chief compliance officer must, in consultation with the CA's board or senior officer, resolve any conflicts that may arise.[302] Under proposed SEC Rules, a CA must establish, implement, maintain and enforce written policies and procedures	***Conflicts of interest*** Under proposed CFTC rules, SIDCOs and Opt-In DCOs are required to have rules and procedures that: [...] (5) establish procedures for managing conflicts of interest among board members; and [...][307].	***Conflicts of interest*** ***CFTC - DCOs.*** *The CFTC regime for DCOs includes requirements for conflicts of interest which are applicable, at a jurisdictional level, to DCOs subject to regulation by the CFTC, and which are broadly equivalent to those of EMIR.* The CFTC regime does not expressly impose a requirement such that a DCO disclose conflics of interest to clearing members and client's, although the CFTC has proposed rules such that members of a DCO and certain other entities would be subject to strict ownership and voting limitations. The CFTC regime does not expressly address conflicts arising by board members serving on multiple boards, although there is a general requirement that a DCO address conflicts of interest in its decision-making process. On balance, these differences do not undermine the consistency of the

Description of the provision in Title IV of EMIR	Description of the corresponding CFTC provisions for DCOs	Description of the corresponding SEC provisions	Description of corresponding CFTC provisions for SIDCOs and Opt-In DCOs[1]	Assessment of Equivalence
CCP, the Client) before accepting new transactions from that Clearing Member.[288] A CCP must take reasonable steps to prevent any misuse of information held in its systems and must prevent the use of that information for other business activities. CCPs should adequately assess and monitor the extent to which board members that sit on the boards of different entities have conflicts of interest, whether within or outside the group of the CCP.[289]	beneficially own, directly or indirectly, more than twenty percent of any class of equity interest of the DCO entitled to vote; or (ii) directly or indirectly vote any interest in the DCO that exceeds twenty percent of the voting power of any class of equity interest of the DCO.[292] Additionally, a DCO must not permit Enumerated Entities[293] (whether or not they are clearing members), together with any Related Persons of such Enumerated Entities, to collectively: (i) own, on a beneficial basis, directly or indirectly, more than forty percent of any class of equity interest of the DCO entitled to vote; or (ii) directly or indirectly vote any interest in the DCO that exceeds forty percent of the voting power of any class of equity interest of the DCO.[294] As an alternative to the foregoing, the DCO may prohibit any member or any Enumer-	reasonably designed to protect the confidentiality of any and all transaction information that the CA receives. Such policies and procedures must include: (1) limiting access to confidential trading information of clearing members to those employees of the CA who are operating the system or responsible for its compliance with any other applicable laws or rules, and (2) standards controlling employees and agents of the CA trading for their personal benefit or the benefit of others.[303] The SEC must adopt rules, which may include numerical limits on the control of, or the voting rights with respect to, any SBS CA, by certain specified entities.[304] The SEC has proposed for comment a requirement that an SBS CA choose between two governance requirements, **either**: (1) the board must be composed of at least 35 percent independent directors; (2) a clearing member, together with related		objectives of the CFTC and EMIR regimes. ***SEC.*** *The SEC regime for CAs is proposed to include conflicts of interest requirements which are applicable, at a jurisdictional level, to CAs subject to regulation by the SEC, and which are broadly equivalent to those of EMIR.* The SEC regime does not expressly impose a requirement such that a CA discloses conflicts of interest to clearing members and clients. The SEC regime does not expressly address conflicts arising from board members serving on multiple boards, although there is a general requirement that a CA address conflicts of interest in its decision-making processes. However, proposed SEC rules would impose strict limits on the control of a CA's voting rights. On balance, these differences do not undermine the consistency of the objectives of the SEC and EMIR regimes. ***CFTC – SIDCOs and Opt-In DCOs.***

Description of the provision in Title IV of EMIR	Description of the corresponding CFTC provisions for DCOs	Description of the corresponding SEC provisions	Description of corresponding CFTC provisions for SIDCOs and Opt-In DCOs[1]	Assessment of Equivalence
	ated Entity, together with its respective related persons, from beneficially owning or voting more than five percent of such interests.[295] • A DCO must establish and maintain written policies and procedures on safeguarding non-public information. These policies must, at a minimum, require that no member of the board, member or any committee, officer or other employee use or disclose any non-public information, absent prior written consent from the DCO.[296] • The CFTC has also proposed reporting of circumstances where the DCO board overrides the risk management committee or the risk management committee overrides a subcommittee.[297] The DCO's chief compliance officer must, in consultation	persons, cannot beneficially own or vote or cause the vote of more than 20% of the SBS CA's voting interest and clearing members, together with related persons, in the aggregate cannot beneficially own or vote or cause the vote of more than 40% of voting interest; (3) the Nominating Committee of the board must have a majority of independent directors; and (4) other committees authorised to act on behalf of the board must have at least 35% independent directors;[305] **OR** (1) the board must be composed of a majority of independent directors; (2) a clearing member, together with related persons, cannot beneficially own or vote or cause the vote of more than 5% of the SBS CA's voting interest; (3) the Nominating Committee must be 100% independent directors; and (4) other committees authorised to act on behalf of the board must have a majority of independent directors.[306]		*Taken in conjunction with the corresponding CFTC provisions for DCOs, the CFTC regime for SIDCOs and Opt-In DCOs includes conflicts of interest requirements which are applicable, at a jurisdictional level, to SIDCOs and Opt-In DCOs subject to regulation by the CFTC, and which are broadly equivalent to those of EMIR.*

Description of the provision in Title IV of EMIR	Description of the corresponding CFTC provisions for DCOs	Description of the corresponding SEC provisions	Description of corresponding CFTC provisions for SIDCOs and Opt-In DCOs[1]	Assessment of Equivalence
	with the board of directors or the senior officer, resolve any conflicts of interest that may arise.[298] The chief compliance officer must annually prepare and sign a written report that covers the most recently completed fiscal year of the DCO and provide it to the board of directors or the senior officer. The report must contain a description of written policies and procedures, including the code of ethics and conflict of interest policies.[299]			
Business continuity The CCP must maintain an organisational structure that ensures continuity and orderly functioning in the performance of its services and activities.[308] A CCP must implement and maintain a business continuity policy and disaster recovery plan to ensure the preservation of its functions, the recovery of operations and the fulfilment of its obligations. The disaster recovery plan must at least	***Business continuity*** Under proposed CFTC Rules, a DCO must ensure that it possesses the ability to manage the risks associated with discharging the responsibilities of the DCO through the use of appropriate tools and procedures.[317] • ***Strategy and policy.*** A DCO must maintain a business continuity and disaster recovery plan, emergency procedures, and physical, technological, and personnel re-	***Business continuity*** • ***Strategy and policy.*** A CA must establish, implement, maintain and enforce written policies and procedures reasonably designed to identify sources of operational risk and minimise them through the development of appropriate systems, controls, and procedures; implement systems that are reliable, resilient and secure, and have adequate, scalable capacity; and,	***Business continuity*** ***Strategy and policy.*** Under proposed CFTC rules, SIDCOs and Opt-In DCOs are required to have rules and procedures that: [...] (6) assign responsibility and accountability for risk decisions and for implementing rules concerning default, recovery, and wind-down[329]. • ***Business impact analysis.*** No corresponding provisions.	***Business continuity*** ***CFTC - DCOs.*** *The CFTC regime DCOs includes business continuity requirements. Based on a review of the legally binding requirements which are applicable, at a jurisdictional level, to DCOs subject to regulation by the CFTC, these requirements are not equivalent to those of EMIR. However, the internal policies, procedures, rules, models and methodologies of individual DCOs, which are out of the scope of this assessment, may contain legally binding provisions equivalent to those of EMIR.* A DCO's business continuity plan must

Description of the provision in Title IV of EMIR	Description of the corresponding CFTC provisions for DCOs	Description of the corresponding SEC provisions	Description of corresponding CFTC provisions for SIDCOs and Opt-In DCOs[1]	Assessment of Equivalence
allow the recovery of all transactions at the time of disruption to allow the CCP to continue to operate with certainty and to complete settlement on the scheduled date.[309] • ***Strategy and policy.*** The business continuity policy and disaster recovery plan must be approved by the board and subject to independent reviews that are reported to the board. The business continuity policy must identify all critical business functions and related systems, and take into account external links and interdependencies within the financial infrastructure, including trading venues cleared by the CCP, securities settlement and payment systems and credit institutions used by the CCP or a linked CCP. It should also take into account critical functions or services which have been outsourced. The business	sources sufficient to enable the timely recovery and resumption of operations and the fulfilment of each obligation and responsibility of the DCO, including daily processing, clearing, and settlement of transactions cleared, following any disruption of its operations.[318] • ***Business impact analysis.*** A DCO must (i) establish and maintain a program of risk analysis and oversight to identify and minimise sources of operational risk through the development of appropriate controls and procedures, and automated systems, that are reliable, secure, and have adequate scalable capacity; (ii) establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allows for (a) the timely recovery and resumption of operations of the DCO and (b) the ful-	have business continuity plans that allow for timely recovery of operations and fulfilment of a CA's obligations.[322] • ***Business impact analysis.*** In the preamble to the final SEC Rules on Clearing Agency Standards, the SEC notes that the requirement to maintain a business continuity plan includes a duty to address extreme circumstances where same-date settlement may be impossible to achieve (*i.e.*, due to natural disasters, terrorist acts, and major communications breakdowns).[323] • ***Disaster recovery.*** Under SEC guidance, the recovery objective of securities, funds and data controls calls for a written contingency plan, which at a minimum covers (1) preparation for contingencies through such devices as appropriate remote and	• ***Disaster recovery.*** A SIDCO must maintain system safeguards for business continutity and disaster recovery that include a two-hour recovery time objective. [330] • ***Testing and monitoring.*** No corresponding provisions. • ***Maintenance.*** No corresponding provisions. • ***Crisis management.*** No corresponding provisions. • ***Communications.*** No corresponding provisions.	be sufficient to enable the DCO to resume daily processing, clearing, and settlement no later than the next business day following the disruption, whereas under EMIR a CCP's plan must identify a maximum acceptable downtime no higher than 2 hours. EMIR identifies more specifically than CFTC Rules when the board is to participate in business continuity and crisis management planning. A DCO is not specifically required to have a secondary processing site capable of ensuring continuity of all its critical functions, with a different geographical risk profile; however, a DCO must have backup facilities and emergency procedures that allow for timely recovery and resumption of operations and fulfilment of each obligation and responsibility of the DCO. The CFTC regime does not specifically require DCOs to have a crisis management function to act in case of emergency, but DCOs must have emergency procedures. ***SEC****. The SEC regime for CAs includes business continuity requirements. Based on a review of the legally binding requirements which are applicable, at a jurisdictional level, to CAs subject to*

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continuity plan should, ***inter alia***, identify the maximum acceptable down time for critical functions and systems, which must not be higher than two hours. End of day procedures and payments should be completed on the required day in all circumstances.[310] • ***Business impact analysis.*** A CCP must conduct a business impact analysis to identify its critical functions and have in place arrangements to ensure the continuity of its critical functions based on various disaster scenarios[311]. • ***Disaster recovery.*** A CCP must maintain a secondary processing site capable of ensuring continuity of all of its critical functions, which must have a geographical risk profile which is different from that of the primary	filment of each obligation and responsibility of the DCO; and (iii) periodically conduct tests to verify that the backup resources of the DCO are sufficient to ensure daily processing, clearing, and settlement.[319] • ***Disaster recovery.*** The DCO's business continuity and disaster recovery plan and the physical, technological, and personnel resources described therein must be sufficient to enable the DCO to resume daily processing, clearing, and settlement no later two hours following the disruption.[320] • ***Testing and monitoring.*** A DCO must conduct regular, periodic and objective testing and review of its business continuity and disaster recovery capabilities by qualified, independent professionals who are not responsible for the operation or devel-	on-site hardware back-up and periodic duplication and off-site storage of data files; (2) off-site storage of up-to-date, duplicative software, files and critical forms and supplies needed for processing operations; (3) immediate availability of software modifications, detailed procedures, organisational charts, job descriptions and personnel for the conduct of operations under a variety of possible contingencies; and (4) emergency mechanisms for establishing and maintaining communications with clearing members and other entities involved in the national clearance and settlement system. Contingency plans should be tested periodically to assure their effectiveness and adequacy. The recovery component of CA safeguards should include adequate insurance coverage, and the CA management and board of direc-		*regulation by the SEC, these requirements are not equivalent to those of EMIR. However, the internal policies, procedures, rules, models and methodologies of individual CAs, which are out of the scope of this assessment, may contain legally binding provisions equivalent to those of EMIR.* The SEC regime requires a CA to maintain a business continuity policy however it does not expressly require that a CA's business continuity plan allow for the CA to complete settlement on the scheduled date, although the policy must allow for timely recovery of operations and fulfilment of a CA's obligations. EMIR identifies more specifically than SEC Rules when the board is to participate in business continuity and crisis management planning. A CA is not specifically required to maintain a secondary processing site capable of ensuring continuity of all of its critical functions, which must have a geographical risk profile which is different from that of the primary site; however, these considerations would be regarded as fundamental redundancy principles and, under SEC guidance, a CA is suggested to have a written contingency plan that covers off-site

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site.[312] • ***Testing and monitoring.*** A CCP must test and monitor its business continuity policy and disaster recovery plan at regular intervals taking into account scenarios of large scale disasters and switchovers between primary and secondary sites.[313] • ***Maintenance.*** A CCP must regularly review and update its business continuity policy and disaster recovery plan to include the most suitable recovery strategy, taking into consideration the outcome of tests and the recommendations of independent reviews and of the relevant CCPs Competent Authority.[314] • ***Crisis management.*** A CCP must have a crisis management function to act in case of emergency, which function must be monitored and reviewed	opment of the systems being tested. Senior DCO management must review reports containing protocols for and results of such tests.[321] • ***Maintenance.*** No corresponding provisions. • ***Crisis management.*** No corresponding provisions. • ***Communications.*** No corresponding provisions.	tors should periodically review the kinds of risks involved in its business and the types and amounts of insurance coverage available. There should be adequate insurance in both coverage and amount for both the CA's operations and the operations of any sub-custodian, delivery service or other agent used by the CA.[324] Under proposed SEC Rules, a CA must establish policies and procedures relating to the capacity, integrity, resiliency and security of its technology systems, establish policies and procedures to ensure its systems operate in the manner intended, including in compliance with relevant federal securities laws and rules, take timely corrective action in response to systems disruptions, systems compliance issues and systems intrusions		storage of up-to-date, duplicative software, files and critical forms and supplies needed for processing operations. The SEC regime does not expressly require a CA to test its business continuity policy at regular intervals. A CA is not expressly required to have a crisis management function to act in case of emergency, which is monitored and reviewed by the board; however, under SEC guidance, CA contingency plans should include emergency communication mechanisms. ***CFTC – SIDCOs and Opt-In DCOs.*** *Taken in conjunction with the corresponding CFTC provisions for DCOs, the CFTC regime for SIDCOs and Opt-In DCOs is proposed to include business continuity requirements which are applicable, at a jurisdictional level, to SIDCOs and Opt-In DCOs subject to regulation by the CFTC, and which are broadly equivalent to those of EMIR.*

Description of the provision in Title IV of EMIR	Description of the corresponding CFTC provisions for DCOs	Description of the corresponding SEC provisions	Description of corresponding CFTC provisions for SIDCOs and Opt-In DCOs[1]	Assessment of Equivalence
by the board.[315] • ***Communications.*** A CCP must have clear procedures to manage internal and external crisis communications and a communication plan documenting how management and relevant external stakeholders will be kept adequately informed during a crisis).[316]		and notify and provide the SEC with detailed information when such systems issues occur as well as when there are material changes in its systems. Written notices would be filed electronically on new Form SCI. [325] ***Testing and monitoring.*** Under proposed SEC Rules, a CA must conduct an annual review of its compliance with Regulation SCI, and submit a report of the annual review to its senior management and the SEC, and designate certain individuals or firms to participate in the testing of its business continuity and disaster recovery plans at least once annually, and coordinate such testing with other entities on an industry- or sector-wide basis. [326] ***Maintenance.*** Under proposed SEC Rules, a CA		

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		must establish policies and procedures relating to the capacity, integrity, resiliency and security of its technology systems, establish policies and procedures to ensure its systems operate in the manner intended, including in compliance with relevant federal securities laws and rules, take timely corrective action in response to systems disruptions, systems compliance issues and systems intrusions and notify and provide the SEC with detailed information when such systems issues occur as well as when there are material changes in its systems. Written notices would be filed electronically on new Form SCI. [327] • ***Crisis management.*** No corresponding provisions. • ***Communications.***		

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		Under proposed SEC Rules, a CA must inform its members or clearing members about certain systems problems and provide information about the systems and market participants affected by the problem and the progress of corrective action.[328]		
Outsourcing Where a CCP outsources operational functions, services or activities, it remains responsible for discharging all of its obligations and must ensure that, ***inter alia***: (i) outsourcing does not result in the delegation of its responsibilities; (ii) the CCP's relationship and obligations towards its Clearing Members and their Clients are not altered; (iii) the conditions for authorizing of the CCP do not effectively change, (iv) outsourcing does not prevent the exercise of the CCP's supervisory and oversight functions, or deprive the CCP	***Outsourcing*** Under CFTC Rules, DCOs are not precluded from outsourcing the performance of activities comprising their regulatory obligations (including risk management) in a manner acceptable to the CFTC (and subject to the oversight of the DCO's chief risk officer). No such outsourcing, under U.S. law, would relieve the DCO from regulatory accountability for the proper performance of the outsourced activities by its service provider. Under the CEA, the act, omission, or failure of any official, agent, or other person acting for any	***Outsourcing*** Under SEC Rules, CAs are not precluded from outsourcing the performance of activities comprising their regulatory obligations (including risk management) in a manner acceptable to the SEC. No such outsourcing, under U.S. law, would relieve the CA from regulatory accountability for the proper performance of the outsourced activities by its service provider. As part of the registration process, a CA must describe whether clearing activities are conducted primarily by a division, subdivision or other	***Outsourcing*** No corresponding provisions.	***Outsourcing*** ***CFTC - DCOs.*** *The CFTC regime for DCOs includes outsourcing requirements which are applicable, at a jurisdictional level, to DCOs subject to regulation by the CFTC, and which are broadly equivalent to those of EMIR.* The CFTC regime articulates a more general standard requiring a DCO to retain responsibility for outsourced services and sufficient expertise to supervise the service provider including in the context of business continuity and disaster recovery. However the CFTC must find the outsourcing conditions acceptable which shares the same objective as EMIR. These differences do not undermine the consistency of the

Description of the provision in Title IV of EMIR	Description of the corresponding CFTC provisions for DCOs	Description of the corresponding SEC provisions	Description of corresponding CFTC provisions for SIDCOs and Opt-In DCOs[1]	Assessment of Equivalence
of necessary systems and controls to manage its risks; (v) the service provider implements equivalent business continuity requirements to those required under EMIR; (vi) the CCP retains necessary expertise and resources to evaluate the quality of services provided, the organisational and capital adequacy of the service provider, and to manage the risks associated with outsourcing on an on-going basis; (vii) the CCP has direct access to relevant information relating to the outsourcing functions; and (viii) the service provider cooperates with the relevant CCPs Competent Authority, and (viii) .the service provider protects any confidential information relating to the CCP and its clearing members and clients or, where the service provider is established in a third country, ensures that the data protection standards of that third country, or those set out in the agreement between the parties	DCO is deemed the act, omission or failure of the DCO.[333] As part of the registration process the CFTC solicits relevant information if the DCO intends to use an outsider service provider to comply with any of the DCO core principles.[334] A DCO may maintain its resources for business continuity and disaster recovery through written contractual arrangements with another DCO or other service provider (outsourcing). A DCO that enters into such a contractual arrangement must retain complete liability for any failure to meet its responsibilities. The outsourcing DCO must employ personnel with the expertise necessary to enable it to supervise the service provider's delivery of the services.[335]	segregable entity within the registrant and must provide information regarding any arrangement in which another person processes, keeps, transmits or maintains any securities, funds, records or accounts relating to the clearing activities.[336]		objectives of the CFTC and EMIR regimes. ***SEC**. The SEC regime for CAs includes outsourcing requirements. Based on a review of the legally binding requirements which are applicable, at a jurisdictional level, to CAs subject to regulation by the SEC, these requirements are not equivalent to those of EMIR. However, the internal policies, procedures, rules, models and methodologies of individual CAs, which are out of the scope of this assessment, may contain legally binding provisions equivalent to those of EMIR.* SEC Rules do not prescribe requirements for outsourcing arrangements, although under generally applicable principles a CA would remain responsible for compliance with applicable regulatory obligations. ***CFTC – SIDCOs and Opt-In DCOs.** Taken in conjunction with the corresponding CFTC provisions for DCOs, the CFTC regime for SIDCOs and Opt-In DCOs includes outsourcing requirements. which are applicable, at a jurisdictional level, to SIDCOs and*

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concerned, are comparable to the data protection standards in effect in the Union.[331] A CCP may not outsource major activities linked to risk management without approval from its Competent Authority. The Competent Authority will require the CCP to allocate and set out its rights and obligations and those of the service provider, clearly in a written agreement. [332]				*Opt-In DCOs subject to regulation by the CFTC, and which are broadly equivalent to those of EMIR.*
B. Conduct of business rules				
Conduct of business rules – general provisions When providing services to its Clearing Members and their Clients, CCPs must act fairly and professionally in line with the best interests of such Clearing Members and Clients and sound risk management.[337] A CCP must have accessible, transparent and fair rules for the prompt handling of complaints. [338]	***Conduct of business rules – general provisions*** A DCO must establish governance arrangements that are transparent to fulfil public interest requirements and to permit the consideration of the views of owners and clearing members.[339]	***Conduct of business rules – general provisions*** The rules of a CA may not be designed to permit unfair discrimination in the admission of clearing members or among clearing members in the use of the CA and may not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.[340] A CA must have governance arrangements that are clear and transparent to fulfil the public interest requirements	***Conduct of business rules – general provisions*** No corresponding provisions.	***Conduct of business rules – general provisions*** ***CFTC. - DCOs*** *The CFTC regime for DCOs includes general business conduct requirements which are applicable, at a jurisdictional level, to DCOs subject to regulation by the CFTC, and which are broadly equivalent to those of EMIR.* A DCO is not specifically required to act in the best interests of clearing members when providing services to them and a DCO is not specifically required to have accessible, transparent and fair rules for the prompt handling of complaints; however, a DCO must have governance arrangements that permit the

Description of the provision in Title IV of EMIR	Description of the corresponding CFTC provisions for DCOs	Description of the corresponding SEC provisions	Description of corresponding CFTC provisions for SIDCOs and Opt-In DCOs[1]	Assessment of Equivalence
		applicable to CAs, to support the objectives of owners and clearing members and to promote the effectiveness of the CA's risk management procedures.[341]		consideration of the views of clearing members and are transparent to the public. On balance, these differences do not undermine the consistency of the objectives of the CFTC and EMIR regimes. ***SEC.*** *The SEC regime for CAs includes general business conduct requirements which are applicable, at a jurisdictional level, to CAs subject to regulation by the SEC, and which are broadly equivalent to those of EMIR.* A CA is not specifically required to act in the best interests of clearing members when providing services to them and a CA is not specifically required to have accessible, transparent and fair rules for the prompt handling of complaints; however, a CA must have governance arrangements that fulfil public interest requirements and support the objectives of clearing members. On balance, these differences do not undermine the consistency of the objectives of the SEC and EMIR regimes.

Description of the provision in Title IV of EMIR	Description of the corresponding CFTC provisions for DCOs	Description of the corresponding SEC provisions	Description of corresponding CFTC provisions for SIDCOs and Opt-In DCOs[1]	Assessment of Equivalence
				CFTC – SIDCOs and Opt-In DCOs. *Taken in conjunction with the corresponding CFTC provisions for DCOs, the CFTC regime for SIDCOs and Opt-In DCOs includes general business conduct requirements which are applicable, at a jurisdictional level, to SIDCOs and Opt-In DCOs subject to regulation by the CFTC, and which are broadly equivalent to those of EMIR.*
Participation requirements A CCP must establish categories of admissible Clearing Members and admission criteria, following the advice of the risk committee. Such criteria must be non-discriminatory, transparent and objective so as to ensure fair and open access to the CCP and must ensure that clearing members have sufficient financial resources and operational capacity to meet the obligations arising from participation in a CCP. Criteria that restrict access may only be permitted if their	***Participation requirements*** A DCO must establish appropriate admission and continuing participation requirements for clearing members of the DCO that are objective, publicly disclosed, and risk-based. The participation requirements must permit fair and open access and must require clearing members to have access to sufficient financial resources to meet obligations arising from participation in the DCO in extreme but plausible market conditions. A DCO may not adopt restrictive standards if less	***Participation requirements*** A CA must have participation requirements that are objective, publicly disclosed and that permit fair and open access.[355] A CA that performs CCP services must: (1) establish, implement, maintain and enforce written policies and procedures reasonably designed to provide the opportunity for a person that does not perform any dealer or SBSD services to obtain membership on fair and reasonable terms at the CA to clear securities for itself or on behalf of other persons; (2) have membership	***Participation requirements*** No corresponding provisions.	***Participation requirements*** ***CFTC - DCOs.*** *The CFTC regime for DCOs includes participation requirements which are applicable, at a jurisdictional level, to DCOs subject to regulation by the CFTC, and which are broadly equivalent to those of EMIR.* CCPs under EMIR are permitted to adopt criteria that restrict access if their objective is to control risk, whereas DCOs may not adopt restrictive standards if less restrictive requirements would achieve the same objective and not materially increase the risk to the DCO and clearing members. A DCO cannot set a minimum capital requirement for clearing members higher than $50 million.

Description of the provision in Title IV of EMIR	Description of the corresponding CFTC provisions for DCOs	Description of the corresponding SEC provisions	Description of corresponding CFTC provisions for SIDCOs and Opt-In DCOs[1]	Assessment of Equivalence
objective is to control risk.[342] Clearing members that clear transactions on behalf of their clients must have the necessary additional financial resources and operational capacity to perform this activity. The CCP's rules for clearing members must allow it to gather relevant basic information to identify, monitor and manage relevant concentrations of risk relating to the provision of services to clients. Clearing Members must, upon request, inform the CCP about the criteria and arrangements they adopt to allow their Clients to access the services of the CCP. Responsibility for ensuring that Clients comply with their obligations remains with Clearing Members.[343] A CCP must have objective procedures for the suspension and exit of clearing members that no longer meet its admission criteria. A CCP may only deny access to Clearing Members meeting the criteria where justified in	restrictive requirements would achieve the same objective and not materially increase risk to the DCO and clearing members.[347] Capital requirements must be scalable to the risks posed by clearing members and a DCO cannot set a minimum capital requirement higher than $50 million.[348] The participation requirements must require clearing members to have adequate operational capacity to meet obligations arising from participation in the DCO. A DCO must require all clearing members to provide to the DCO periodic financial reports that contain any financial information that the DCO determines is necessary to assess whether participation requirements are being met on an on-going basis.[349] A DCO must adopt rules that require its clearing members to maintain current written risk management policies and procedures, which address the risks that such clearing members may pose to the DCO. Such policies and	standards that do not require that clearing members maintain a portfolio of any minimum size or that clearing members maintain a minimum transaction volume; (3) provide a person that maintains net capital equal to or greater than $50 million with the ability to obtain membership at the CA subject to compliance with other reasonable membership standards, with any net capital requirements being scalable so they are proportional to the risks posed by the clearing member to the CA. The CA may provide for a higher net capital requirement as a condition for membership if the CA demonstrates to the SEC that such a requirement is necessary to mitigate risks that could not otherwise be effectively managed by other measures and the SEC approves the higher net capital requirement.[356] A CA must require clearing members to have sufficient financial resources and robust operational capacity to meet		Although a DCO must manage its credit exposure to clearing members, a DCO is not specifically required to have rules that allow the DCO to identify, monitor and manage concentrations of risk relating to the clearing member's provision of services to clients. The CFTC regime does not specifically require DCOs to have objective procedures for the suspension and exit of clearing members and to only deny access to clearing members that meet participation requirements where justified in writing; however, a DCO must provide fair and open access and may not adopt restrictive participation standards if less restrictive requirements would achieve the same objective and not materially increase risk to the DCO and clearing members A DCO must allow clearing members to outsource participation in default management auctions, whereas a CCP under EMIR is not required to allow this. CFTC Rules do not specifically require DCOs to conduct a comprehensive annual review of its clearing members' compliance with participation requirements. EMIR is generally more detailed with

Description of the provision in Title IV of EMIR	Description of the corresponding CFTC provisions for DCOs	Description of the corresponding SEC provisions	Description of corresponding CFTC provisions for SIDCOs and Opt-In DCOs[1]	Assessment of Equivalence
writing, based on a comprehensive risk analysis.[344] A CCP may impose additional obligations on Clearing Members, such as participation in auctions of a Defaulting Clearing Member's (as defined below) position. Such additional obligations must be proportional to the risk brought by the Clearing Member and must not restrict participation to certain categories of Clearing Members.[345] A CCP must ensure the application of the above criteria on an on-going basis and must annually conduct a comprehensive review of compliance with these provisions by its Clearing Members.[346]	procedures must be available for review by the DCO and the CFTC.[350] Participation requirements must permit fair and open access and a DCO may not adopt restrictive standards if less restrictive requirements would achieve the same objective and not materially increase risk to the DCO and clearing members.[351] Participation requirements must require clearing members to have the capability to participate in default management activities.[352] The CFTC requires that DCOs entitle a clearing member to outsource its requirement to participate in default management auctions, subject to appropriate safeguards imposed by the DCO.[353] A DCO must review its clearing members' current written risk management policies and procedures policies and procedures on a periodic basis.[354]	obligations arising from participation in the CA and have procedures in place to monitor that participation requirements are met on an on-going basis. A CA may summarily suspend a clearing member who has been suspended or expelled from a self-regulatory organisation, who has defaulted to the CA or who is in such financial or operating difficulty that the CA determines suspension is necessary to protect the CA, its clearing members, creditors or investors. Following such suspension, the CA must conduct a formal hearing. The regulatory agency for such clearing member may stay the suspension if consistent with the public interest and the protection of investors.[357] A CA must have procedures in place to monitor that participation requirements are met on an on-going basis.[358]		regards to organisational requirements and gaps exist between EMIR and the CFTC regime for DCOs if the EMIR requirements are assessed on a line-by-line basis. However, on balance, the gaps do not undermine the consistency of objectives between the CFTC regime for DCOs and the regime under EMIR. ***SEC.*** *The SEC regime for CAs includes participation requirements which are applicable, at a jurisdictional level, to CAs subject to regulation by the SEC, and which are broadly equivalent to those of EMIR.* CCPs under EMIR are permitted to adopt criteria that restrict access if their objective is to control risk. The SEC prevents the CA from requiring a minimum portfolio size, minimum transaction volume, or, unless necessary to mitigate risks that could not otherwise be effectively managed by other measures and with SEC approval, impose a net capital requirement higher than $50 million. A CA is not specifically required to have rules that allow the CA to identify, monitor and manage concentrations of risk relating to the clearing member's provision of services to clients.

Description of the provision in Title IV of EMIR	Description of the corresponding CFTC provisions for DCOs	Description of the corresponding SEC provisions	Description of corresponding CFTC provisions for SIDCOs and Opt-In DCOs[1]	Assessment of Equivalence
				SEC Rules do not specifically address additional requirements imposed on clearing members or require the additional obligations to be proportional to the risk brought by the clearing member. EMIR requires CCPs to have objective procedures for suspension of clearing members justified by a comprehensive risk analysis. The SEC regime allows CAs to suspend clearing members that are in default, in such difficulty that the suspension is necessary to protect the CA or that have been suspended from a self-regulatory organisation. The SEC regime does not require CAs to conduct annually a comprehensive review of compliance with the participation requirements by its clearing members. EMIR is generally more detailed with regards to participation requirements and gaps exist between EMIR and the SEC regime for CAs if the EMIR requirements are assessed on a line-by-line basis. However, on balance, the gaps do not undermine the consistency of objectives between the SEC regime for CAs and the regime under EMIR. ***CFTC – SIDCOs and Opt-In DCOs.***

Description of the provision in Title IV of EMIR	Description of the corresponding CFTC provisions for DCOs	Description of the corresponding SEC provisions	Description of corresponding CFTC provisions for SIDCOs and Opt-In DCOs[1]	Assessment of Equivalence
				Taken in conjunction with the corresponding CFTC provisions for DCOs, the CFTC regime for SIDCOs and Opt-In DCOs includes participation requirements which are applicable, at a jurisdictional level, to SIDCOs and Opt-In DCOs subject to regulation by the CFTC, and which are broadly equivalent to those of EMIR.
Transparency A CCP and its Clearing Members must publicly disclose the prices and fees associated with each service provided separately (including discounts and rebates and the conditions to benefit from such reductions).[359] A CCP must also publicly disclose (i) on an aggregated basis, the volumes of cleared transactions for each class of instruments cleared, (ii) the operational and technical requirements relating to communication protocols used with third parties, and (iii) any breaches by clearing members of its participation requirements, except where the competent authority, after	***Transparency*** A DCO must disclose publicly each clearing and other fee that the DCO charges the members and clearing members of the DCO.[364] A DCO must also disclose publicly the terms and conditions of each contract cleared and settled by the DCO and any other matter relevant to participation in the settlement and clearing activities of the DCO.[365] A DCO must publicly disclose its admission and continuing participation requirements for clearing members,[366] default rules,[367] rulebook and a list of all current clearing members.[368] A DCO must notify the CFTC immediately	***Transparency*** A CA must provide market clearing members with sufficient information for them to identify and evaluate the costs associated with using its services.[375] In the preamble to the final SEC Rules on Clearing Agency Standards, the SEC notes that under existing requirements, CAs must incorporate matters such as its fees, collateral deposits, and operational requirements in its rules and procedures, which are made available to market clearing members and the public.[376] A CA must make information relating to the following available to the public free of charge: annual audited	***Transparency*** Under proposed CFTC rules, SIDCOs and Opt-In DCOs are required to disclose their responses to the CPSS-IOSCO Disclosure Framework, relevant basic data on transaction volume and values, to publish their rules, policies, and procedures describing whether customer funds are protected on an individual or omnibus basis and whether customer funds are subject to any legal or operational constraints that may impair the ability of the SIDCO or Opt-In DCO to segregate or port the positions and related collateral of a clearing member's customers.[381]	***Transparency*** ***CFTC – DCOs.*** *The CFTC regime for DCOs includes transparency requirements which are applicable, at a jurisdictional level, to DCOs subject to regulation by the CFTC, and which are broadly equivalent to those of EMIR.* A DCO is not specifically required to disclose: (i) to the public, the operational and technical requirements relating to communication protocols used with third parties, (ii) to the CFTC, the costs and revenues of its services, or (iii) to the public, any breaches by clearing members of its participation requirements; however, a DCO is required to disclose any matter relevant to participation in the settlement and clearing activities of the DCO, and a DCO is required to notify the CFTC immediately upon the default of a clearing member or whenever a clearing

Description of the provision in Title IV of EMIR	Description of the corresponding CFTC provisions for DCOs	Description of the corresponding SEC provisions	Description of corresponding CFTC provisions for SIDCOs and Opt-In DCOs[1]	Assessment of Equivalence
consulting ESMA, considers that such disclosure would constitute a threat to financial stability or to market confidence or would seriously jeopardize the financial markets or cause disproportionate damage to the parties involved.[360] A CCP must allow its Clearing Members and Clients separate access to the specific services provided.[361] A CCP must inform Clearing Members and their Clients of the risks associated with the services provided.[362] A CCP must disclose (i) to its Competent Authority the costs and revenues of the services and (ii) to its Competent Authority and Clearing Members the price information used to calculate its end-of-day exposures to its Clearing Members.[363]	upon the default of a clearing member[369] and, as an SRO, a DCO must notify the CFTC whenever a clearing member ceases to be in good standing.[370] A DCO must provide to market clearing members sufficient information to enable the market participants to identify and evaluate accurately the risks and costs associated with using the services of the DCO.[371] A DCO must also disclose publicly its margin-setting methodology, the size and composition of its financial resource package and daily settlement prices, volume, and open interest for each contract settled or cleared by the DCO.[372] A DCO's filing of new rules and rule amendments for CFTC review and approval and new rules and rule amendments pursuant to the self-certification procedures must be treated as public information unless accompanied by a request for	financial statements, participation requirements and key aspects of the CA's default procedures.[377] A CA must provide market participants with sufficient information for them to identify and evaluate the risks associated with using its services.[378] A CA must provide market participants with sufficient information for them to identify and evaluate the costs associated with using its services.[379] Under proposed SEC Rules, an SBS CA must provide to the public on reasonable, non-discriminatory terms all end-of-day settlement prices and any other prices with respect to SBS that the CA may establish to calculate mark-to-market margin requirements for its clearing members and any other pricing or valuation information with respect to SBS as is published or distributed by the CA to its clearing members.[380]		member is no longer in good standing. A DCO is not specifically required to allow its clearing members and clients separate access to specific services it provides neither is it required to price each service separately however DCOs must provide fair and open access which has the same objective as EMIR. On balance, these differences do not undermine the consistency of the objectives of the CFTC and EMIR regimes. ***SEC.*** *The SEC regime for CAs includes transparency requirements which are applicable, at a jurisdictional level, to CAs subject to regulation by the SEC, and which are broadly equivalent to those of EMIR.* A CA is not specifically required to allow its clearing members and clients separate access to the specific services provided neither is it required to price each service separately however CAs must provide fair and open access which has the same objective as EMIR. A CA is not specifically required to disclose to the public the volumes of cleared transactions for each class of

Description of the provision in Title IV of EMIR	Description of the corresponding CFTC provisions for DCOs	Description of the corresponding SEC provisions	Description of corresponding CFTC provisions for SIDCOs and Opt-In DCOs[1]	Assessment of Equivalence
	confidential treatment.[373] Under proposed CFTC Rules, a DCO must make the following information available to the public: (i) the charter (or mission statement) of the DCO; (ii) the charter (or mission statement) of the DCO's board of directors, each committee with a composition requirement (including any Executive Committee), as well as each other committee that has the authority to amend or constrain actions of the board of directors; (iii) the board of directors nomination process for the DCO, as well as the process for assigning members of the board of directors or other persons to any committee referenced in (ii); (iv) for the board of directors and each committee referenced in (ii), the names of all members; (v) the identities of all Public Directors and all representatives of customers; (vi) the lines of responsibility and accountability for each operational unit of the DCO; and (vii) summaries of significant decisions			instruments cleared, the operational and technical requirements relating to communication protocols used with third parties or breaches by clearing members of its participation requirements. The SEC regime does require a CA to disclose the costs of its services and, under proposed SEC Rules, SBS CAs would be required to disclose price information used to calculate end-of-day exposures to clearing members. On balance, these differences do not undermine the consistency of the objectives of the SEC and EMIR regimes. ***CFTC – SIDCOs and Opt-In DCOs.*** *Taken in conjunction with the corresponding CFTC provisions for DCOs, the CFTC regime for SIDCOs and Opt-In DCOs includes transparency requirements which are applicable, at a jurisdictional level, to SIDCOs and Opt-In DCOs subject to regulation by the CFTC, and which are broadly equivalent to those of EMIR.*

Description of the provision in Title IV of EMIR	Description of the corresponding CFTC provisions for DCOs	Description of the corresponding SEC provisions	Description of corresponding CFTC provisions for SIDCOs and Opt-In DCOs[1]	Assessment of Equivalence
	implicating the public interest.[374]			
Segregation and portability A CCP must keep separate records and accounts that enable it to identify and segregate the assets and positions of one Clearing Member from the assets and positions of any other Clearing Member and from its own assets. In addition, a CCP must offer to keep separate records and accounts enabling each Clearing Member to either (i) distinguish the assets and positions of that Clearing Member from those held for the accounts of its Clients ("omnibus client segregation") or (ii) distinguish the assets and positions held for the account of a Client from those held for the accounts of other Clients ("individual client segregation").[382] A Clearing Member must keep separate records and accounts that enable it to distinguish both in accounts held with the CCP and in its own accounts	***Segregation and portability*** A DCO must segregate all Cleared Swaps Customer Collateral that it receives from FCMs, and must **either** hold such Cleared Swaps Customer Collateral by: • Physically separating such collateral from its own property, the property of any FCM, and the property of any other person that is not a Cleared Swaps Customer of an FCM and meeting other specified requirements;[388] **OR** • Depositing such collateral into one or more Cleared Swaps Customer Accounts held at a Permitted Depository qualifying pursuant to the requirements set forth in CFTC Regulation	***Segregation and portability*** CAs are not permitted to hold, dispose of or use customer funds as belonging to the depository broker-dealer or any person other than the SBS customer of the broker-dealer.[398] Where a CA accepts customer assets used to margin customer positions consisting of swaps and SBS in commingled customer omnibus accounts, the CA will be required to maintain additional resources sufficient to withstand, at a minimum, a default by the two clearing member families to which it has the largest exposures with respect to SBS ("cover two").[399] A broker-dealer generally must maintain in a segregated account for the benefit of customers all fully paid and excess margin securities held by the firm for the accounts of customers, which would include placing those	***Segregation and portability*** Under proposed CFTC rules, SIDCOs and Opt-In DCOs are required to publish their rules, policies, and procedures describing whether customer funds are protected on an individual or omnibus basis and whether customer funds are subject to any legal or operational constraints that may impair the ability of the SIDCO or Opt-In DCO to segregate or port the positions and related collateral of a clearing member's customers[404].	***Segregation and portability*** ***CFTC - DCOs.*** *The CFTC regime for DCOs includes segregation and portability requirements which are applicable, at a jurisdictional level, to DCOs subject to regulation by the CFTC, and which are broadly equivalent to those of EMIR.* DCOs are subject to a single segregation regime under the CFTC provisions and the EMIR requirement for a CCP to offer individual segregation does not feature, however, the single regime under the CFTC provisions requires that DCOs must keep separate records and accounts to distinguish the positions and value of collateral held for the account of each and every client from that held for the account of other client, collateral provided by a client must not be used to cover losses other than those of that client and any collateral in excess of a client's requirement can be posted to the DCO if the DCO has put in place certain arrangements. Whilst the CFTC regile only requires value of collateral to be segregated and not the asset, the effect of these requirements is very similar to those prescribed under EMIR. Namely from an operational perspective a DCO

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its assets and positions from the assets and positions held for the account of its Clients. A Clearing Member must offer its Clients, at least, the choice between omnibus client segregation and individual client segregation and inform them of the costs and level of protection (as further described below) associated with each option. The Client must confirm its choice in writing. When a Client opts for individual client segregation, any margin in excess of the Client's requirement must also be posted to the CCP and distinguished from the margins of other Clients or Clearing Members and must not be exposed to losses connected to positions recorded in another account.[383] CCPs and Clearing Members must publicly disclose the levels of protection offered, including the costs and main legal implications (including information relating to treatment on insolvency) of	22.4.[389] If the DCO holds Cleared Swaps Customer Collateral itself, then it must record in its books and records the amount of such Cleared Swaps Customer Collateral separately from its own funds, the funds of any FCM, and the funds of any other person that is not a Cleared Swaps Customer of an FCM.[390] If the DCO holds Cleared Swaps Customer Collateral in a Permitted Depository, it must maintain a Cleared Swaps Customer Account with each such Permitted Depository.[391] FCMs are subject to similar segregation and record keeping requirements with respect to Cleared Swaps Customer Collateral.[392] A DCO may commingle the Cleared Swaps Customer Collateral that it receives from multiple FCMs on behalf of their Cleared Swaps Customers.[393] A DCO must not commingle the Cleared Swaps Customer Collateral that it receives from an FCM	securities at a qualified clearing agency.[400] The net amount of cash owed to customers also must be maintained in a segregated reserve account for the exclusive benefit of its customers.[401] The SEC has proposed rules that would extend these segregation and customer protection requirements to non-broker-dealers registered as SBSDs. Broker-dealers and SBSDs are generally required to hold money, securities and property of an SBS customer to margin, guarantee or secure a cleared SBS as belonging to the SBS customer and may not commingle those items with funds of the broker-dealer/SBSD or use them to margin, guarantee or secure trades of other customers.[402] Broker-dealers are permitted to deposit commingled SBS customer funds in a separate account of an CA.[403]		must keep a separate record of the positions and value of collateral provided by of each client but may operationally co-mingle the collateral of clients and from a legal perspective a DCO may only apply the collateral of a client to losses arising from the positions of that client. A DCO is not specifically required to publicly disclose the levels of protection offered, including the costs and main legal implications (including information relating to treatment on insolvency) of each level of protection or to offer those services on reasonable commercial terms. The CFTC regime does not specifically require DCOs to publicly disclose a right of use with respect to margins or default fund contributions. However, a DCO must disclose its rules, which would include rights to use margin and default fund contributions upon default, as well as any other matters relevant to clearing and settlement. EMIR is more detailed with regards to segregation requirements and gaps exist between EMIR and the CFTC regime for DCOs if the EMIR requirements are assessed on a line-by-line basis. However, on balance, the gaps do not undermine the consistency of objectives

Description of the provision in Title IV of EMIR	Description of the corresponding CFTC provisions for DCOs	Description of the corresponding SEC provisions	Description of corresponding CFTC provisions for SIDCOs and Opt-In DCOs[1]	Assessment of Equivalence
each level of protection and must offer those services on reasonable commercial terms.[384] A CCP must have a right of use relating to the margins or default fund contributions collected via a security financial collateral arrangement, within the meaning of Article 2(1)(c) of Directive 2002/47/EC on financial collateral arrangements, provided that the use of such arrangements is provided for in its operating rules. The Clearing Member must confirm its acceptance of the operating rules in writing. The CCP must publicly disclose that right of use, which shall be exercised in accordance with Article 47 (Investment Policy).[385] The requirement to distinguish assets and positions with the CCP in accounts is satisfied where: (a) the assets and positions are recorded in separate accounts; (b) the netting of positions	on behalf of Cleared Swaps Customers with any of the following: the money, securities, or other property belonging to the DCO; the money, securities, or other property belonging to any FCM; or other categories of funds that it receives from an FCM on behalf of customers.[394] FCMs are subject to similar segregation and record keeping requirements with respect to Cleared Swaps Customer Collateral. [395] Subject to CFTC Regulation 22.3(d), which permits the investment of Cleared Swaps Customer Collateral pursuant to CFTC Regulation 1.25, each DCO receiving Cleared Swaps Customer Collateral from an FCM must treat the value of collateral required with respect to the portfolio of rights and obligations arising out of the Cleared Swaps intermediated for each Cleared Swaps Customer, and collected from the FCM, as belonging to such customer,			between the CFTC regime for DCOs and the regime under EMIR. ***SEC.*** *The SEC regime for CAs includes segregation and portability requirements. Based on a review of the legally binding requirements which are applicable, at a jurisdictional level, to CAs subject to regulation by the SEC, these requirements are not equivalent to those of EMIR. However, the internal policies, procedures, rules, models and methodologies of individual CAs, which are out of the scope of this assessment, may contain legally binding provisions equivalent to those of EMIR.* CAs are not as such subject to a segregation regime under the SEC provisions, they are not required to distinguish proprietary and client accounts. A CA is not specifically required to publicly disclose the levels of protection offered, including the costs and main legal implications (including information relating to treatment on insolvency) of each level of protection or to offer those services on reasonable commercial terms. SEC Rules do not specify the legal mechanism through which a CA has the right to use margin or default fund contributions, however a CA must have policies that provide for a well-founded,

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recorded on different accounts is prevented; (c) the assets covering the positions recorded in an account are not exposed to losses connected to positions recorded in another account.[386] For purposes of the above, assets refer to collateral held to cover positions and include the right to the transfer of assets equivalent to that collateral or the proceeds of the realization of any collateral, but does not include default fund contributions.[387]	and such amount must not be used to margin, guarantee, or secure the Cleared Swaps or other obligations of the FCM or of any other Cleared Swaps Customer or other customer.[396] A DCO may not, and may not permit its clearing members to, net positions of different customers against one another.[397]			transparent and enforceable legal framework for each aspect of its activities in all relevant jurisdictions. ***CFTC – SIDCOs and Opt-In DCOs.*** *Taken in conjunction with the corresponding CFTC provisions for DCOs, the CFTC regime for SIDCOs and Opt-In DCOs includes segregation and portability requirements which are applicable, at a jurisdictional level, to SIDCOs and Opt-In DCOs subject to regulation by the CFTC, and which are broadly equivalent to those of EMIR.*
C. Prudential requirements				
Exposure management A CCP must measure and assess its liquidity and credit exposures to each Clearing Member and to any CCPs with which it has entered into interoperability arrangements ("Interoperable CCPs"), on a near to real-time basis.[405]	***Exposure management*** A DCO must effectively measure, monitor, and manage its liquidity risks,[406] and a DCO must measure its credit exposure to each clearing member and mark to market such clearing member's open house and customer positions at least once each business day and	***Exposure management*** A CA that performs CCP services must establish, implement, maintain and enforce policies and procedures reasonably designed to measure its credit exposures to its clearing members at least once a day and limit its exposures to potential losses from defaults	***Exposure management*** No corresponding provisions.	***Exposure management*** ***CFTC - DCOs.*** *The CFTC regime for DCOs includes exposure management requirements which are applicable, at a jurisdictional level, to DCOs subject to regulation by the CFTC, and which are broadly equivalent to those of EMIR.* The only differences being that DCOs must monitor credit exposure periodically during the day, whereas

Description of the provision in Title IV of EMIR	Description of the corresponding CFTC provisions for DCOs	Description of the corresponding SEC provisions	Description of corresponding CFTC provisions for SIDCOs and Opt-In DCOs[1]	Assessment of Equivalence
	monitor its credit exposure to each clearing member periodically during each business day.[407] A DCO must monitor the full range and concentration of its exposures to its own and its clearing members' settlement bank(s) and assess its own and its clearing members' potential losses and liquidity pressures in the event that the settlement bank with the largest share of settlement activity were to fail.[408]	by its clearing members under normal market conditions so that the operations of the CA would not be disrupted and non-defaulting clearing members would not be exposed to losses that they cannot anticipate or control.[409] A CA must establish, implement, maintain and enforce policies and procedures reasonably designed to evaluate the potential sources of risks that can arise when the CA establishes links either cross-border or domestically to clear or settle trades, and to ensure that these risks are managed prudently on an on-going basis.[410]		CCPs under EMIR must monitor credit exposures on a near to real-time basis. DCOs do not have specific requirements relating to interoperability arrangements. These arrangements, however, do not form part of this technical advice. On balance, these differences do not undermine the consistency of the objectives of the CFTC and EMIR regimes. ***SEC.*** *The SEC regime for CAs includes exposure management requirements which are applicable, at a jurisdictional level, to CAs subject to regulation by the SEC, and which are broadly equivalent to those of EMIR.* The only difference being that EMIR requires CCPs to measure and assess their liquidity and credit exposures to clearing members and interoperable CCPs on a near to real-time basis, whereas SEC Rules require CAs to measure credit exposures to clearing members at least daily and to ensure that risks that arise from establishing links to other CCPs are managed prudently on an on-going basis. On balance, these differences do not

Description of the provision in Title IV of EMIR	Description of the corresponding CFTC provisions for DCOs	Description of the corresponding SEC provisions	Description of corresponding CFTC provisions for SIDCOs and Opt-In DCOs[1]	Assessment of Equivalence
				undermine the consistency of the objectives of the SEC and EMIR regimes. ***CFTC – SIDCOs and Opt-In DCOs.*** *Taken in conjunction with the corresponding CFTC provisions for DCOs, the CFTC regime for SIDCOs and Opt-In DCOs includes exposure management requirements which are applicable, at a jurisdictional level, to SIDCOs and Opt-In DCOs subject to regulation by the CFTC, and which are broadly equivalent to those of EMIR.*
Margin requirements A CCP must impose, call and collect margin to limit credit exposures from its Clearing Members and Interoperable CCPs. Margins must cover potential exposures that the CCP estimates will occur until the liquidation of the relevant positions. They should be sufficient to cover losses that result from at least 99% of the exposures movements over an approximate time horizon and they must ensure that a CCP fully collateralizes its	***Margin requirements*** A DCO, through margin requirements and other risk control mechanisms, must limit the exposure of the DCO to potential losses from defaults by members and clearing members.[425] The margin required from each member and participant of a DCO must be sufficient to cover potential exposures in normal market conditions[426] based on the DCO's estimated liquidation horizon.[427] The coverage of the initial margin	***Margin requirements*** A CA must establish, implement, maintain and enforce policies and procedures reasonably designed to use margin requirements to limit its credit exposures to clearing members.[445] A CA must measure its credit exposures to its clearing members at least once a day and limit its exposures to potential losses from defaults by its clearing members in normal market conditions so that the	***Margin requirements*** • ***Percentage.*** No corresponding provisions. • ***Time horizon for the calculation of historical volatility***. No corresponding provisions. • ***Time horizons for the liquidation period***. No corresponding provisions. • ***Portfolio Margining***. No corresponding provi-	***Margin requirements*** ***CFTC - DCOs.*** *The CFTC regime for DCOs includes margin requirements. Based on a review of the legally binding requirements which are applicable, at a jurisdictional level, to DCOs subject to regulation by the CFTC, these requirements are not equivalent to those of EMIR. However, the internal policies, procedures, rules, models and methodologies of individual DCOs, which are out of the scope of this assessment, may contain legally binding provisions equivalent to those of EMIR.*

Description of the provision in Title IV of EMIR	Description of the corresponding CFTC provisions for DCOs	Description of the corresponding SEC provisions	Description of corresponding CFTC provisions for SIDCOs and Opt-In DCOs[1]	Assessment of Equivalence
exposures with all its Clearing Members and Interoperable CCPs, at least on a daily basis.[411] CCPs should follow principles to adequately tailor their margin levels to the characteristics of each financial instrument or portfolio they clear.[412] CCPs must regularly monitor and if necessary revise the level of their margins to reflect market conditions taking into account any potential procyclical effects of such revisions.[413] A CCP must adopt models and parameters in setting its margin requirements that capture the risk characteristics of the products cleared and take into account the interval between margin collections, market liquidity and the possibility of changes over the duration of the transaction. The models and parameters must be validated by the Competent Authority and subject to an opinion in accordance with Article 19.[414] A CCP must call and collect	requirements produced by a DCO's models, along with projected measures of the models' performance, must meet an established confidence level of at least 99 percent.[428] A DCO must establish initial margin requirements that are commensurate with the risks of each product and portfolio, including any unusual characteristics of, or risks associated with, particular products or portfolios, including but not limited to jump-to-default risk or similar jump risk.[429] On a daily basis, a DCO must determine the adequacy of its initial margin requirements.[430] A DCO must use models that generate initial margin requirements sufficient to cover the DCO's potential future exposures to clearing members based on price movements in the interval between the last collection of variation margin and the time within which the DCO estimates that it would be able	operations of the CA would not be disrupted and non-defaulting clearing members would not be exposed to losses that they cannot anticipate or control.[446] "Normal market conditions" means conditions in which the expected movement of the price of cleared securities would produce changes in a CA's exposures to its clearing members that would be expected to breach margin requirements or other risk control mechanisms only one percent of the time.[447] A CA must establish, implement, maintain and enforce policies and procedures reasonably designed to use risk-based models and parameters to set margin requirements and review such margin requirements and the related risk-based models and parameters at least monthly.[448] The SEC chose not to stipulate specific requirements pertaining to the scope of historical price data, liquidity and replacement	sions. • ***Procyclicality***. No corresponding provisions.	A DCO must have its margin models reviewed and validated by a qualified and independent party on a regular basis. DCOs are not required to have their margin models validated by the CFTC, although the CFTC must be satisfied that the model will produce results consistent with the financial integrity requirements under the DCO core principles. A DCO is not specifically required to call and collect margins on an intraday basis when predefined thresholds are exceeded. When calculating IM, a DCO must use at least a 99% minimum confidence interval (or such higher level as the CFTC determines necessary), whereas under EMIR a CCP must use (i) a 99.5% minimum confidence interval for OTC derivatives, unless they have the same risk characteristics as derivatives executed on a regulated market or equivalent third country market, in which case the minimum is 99%, and (ii) a 99% minimum confidence interval for other financial instruments. The CFTC regime does not specifically subject financial instruments to a criteria-based approach that could increase the required confidence level; however, DCOs must select an

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margins on an intraday basis, at least when predefined thresholds are exceeded. A CCP must call and collect margins that are adequate to cover the risk stemming from the positions registered in each account with respect to specific financial instruments. A CCP may calculate margins with respect to a portfolio of financial instruments provided that the methodology used is prudent and robust.[415] The initial margin ("IM") to be required by a CCP is defined as the amount of margin necessary to cover the exposures arising from market movements for each financial instrument margined on a product basis, expected to occur, based on data from an appropriate look back period, with a specified confidence interval and assuming a specified time period for the liquidation of positions (as all defined below).[416] • ***Percentage.*** When calculating IM, a CCP must use at least the following	to liquidate a defaulting clearing member's positions (liquidation time).[431] Each model and parameter used in setting margin requirements must be risk-based and reviewed on a regular basis.[432] DCO's systems for generating initial margin requirements, including its theoretical models, must be reviewed and validated by a qualified and independent party, on a regular basis.[433] A DCO must conduct back tests, as defined in CFTC Regulation 39.2, using an appropriate time period but not less than the previous 30 days.[434] A DCO must require its clearing members to ensure that their customers do not withdraw funds from their accounts unless the net liquidating value plus the margin deposits remaining in a customer's account are sufficient to meet the customer initial margin.[435] A DCO must establish and enforce time deadlines for initial and variation margin	considerations, and the correlation of price risks used in calculating margin requirements, opting for a more flexible standard. While a CA may take such factors into consideration when determining margin requirements, the SEC believes each registered CA should be free to develop the best margin methodology to accommodate its unique products and markets. Accordingly, the SEC believes that it should not attempt to prescribe the appropriate margin methodologies for each CA or financial instrument.[449] Consistent with its understanding that the practice at many CAs is to measure credit exposures more than once daily, the SEC notes in the preamble to the final rules on Clearing Agency Standards that, rather than prescribing a specific frequency for risk exposure measurements (other than the once daily minimum), the SEC believes that CAs should		appropriate historic time period to calculate the 99% confidence interval based on characteristics of the particular product, spread, account or portfolio. A DCO must determine the appropriate historical time period based on the characteristics, including volatility patterns, as applicable, of each product, spread, account, or portfolio; however, a under EMIR a CCP must calculate IM using historical volatility data from at least the latest 12-month period, which must capture a full range of market conditions, including periods of stress. The minimum liquidation times for DCOs are: (i) one day for futures, options, and swaps on agricultural commodities, energy commodities, and metals, (ii) 5 days for all other swaps or (iii) a longer liquidation time as is appropriate based on the specific characteristics of a particular product or portfolio. For CCPs under EMIR the minimum liquidation times are (i) 5 business days for OTC derivatives and (ii) 2 business days for other financial instruments and OTC derivatives that have the same risk characteristics as derivatives executed on regulated market or equivalent third country market. Unlike CCPs under EMIR, a DCO is not

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minimum confidence intervals: (i) for OTC derivatives, 99.5%; and (ii) for other financial instruments, 99%.[417] All classes of financial instruments are also subject to a criteria-based approach that could increase the required confidence interval. The criteria-based approach should take into account factors including: (i) the complexities and level of pricing uncertainties of the class of financial products; (ii) the risk characteristics of the class (including volatility, duration, liquidity, non-linear price characteristics, jump to default risk and wrong way risk); (iii) the degree to which other risk controls do not adequately limit credit exposure; and (iv) the inherent leverage of the class of financial instrument (including volatility, concentration and difficulties in closing out).[418] However, CCPs may	payments to the DCO by its clearing members.[436] • ***Percentage.*** The actual coverage of the initial margin requirements produced by such models, along with projected measures of the models' performance, must meet an established confidence level of at least 99 percent.[437] • ***Time horizon for the calculation of historical volatility***. A DCO must determine the appropriate historic time period based on the characteristics, including volatility patterns, as applicable, of each product, spread, account, or portfolio.[438] • ***Time horizons for the liquidation period.*** The liquidation period used to calculate IM must be at least: (i) for futures and options, one day; (ii) for swaps on agricultural commodities,	monitor exposure and margin coverage on an intraday basis depending on the individual risk characteristics of their members and businesses, and adjust their risk management processes as needed.[450] • ***Percentage.*** In the preamble to the final SEC Rule on Clearing Agency Standards, the SEC states that using risk-based models to ensure coverage at a 99% confidence interval over a designated time horizon is the minimum benchmark for measuring credit exposures and setting margin requirements.[451] • ***Time horizon for the calculation of historical volatility***. No corresponding provisions. • ***Time horizons for the liquidation period***. No corresponding provisions. • ***Portfolio Margining.*** While the SEC also agrees		limited generally to a maximum reduction of 80% of the difference between (i) the sum of the IMs for each instrument calculated on an individual basis and (ii) the IM calculated based on a combined estimation of the exposure for the combined portfolio. DCO portfolio margining requires a theoretical basis along with a statistical correlation. DCOs are not required to take into account the procyclical effects of revisions to their margin levels. A DCO is not specifically required to ensure that its policy for selecting and revising the confidence interval, liquidation period and look back period deliver stable and prudent margin requirements that limit procyclicality to the extent the soundness and financial security of the DCO are not affected. ***SEC.*** *The SEC regime for CAs includes margin requirements. Based on a review of the legally binding requirements which are applicable, at a jurisdictional level, to CAs subject to regulation by the SEC, these requirements are not equivalent to those of EMIR. However, the internal policies, procedures, rules, models and methodologies of individual CAs, which are out of the scope of this assessment,*

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apply an alternative confidence interval of 99% to OTC derivatives that have the same risk characteristics as derivatives executed on a regulated market or equivalent third country market, provided that the risks of the OTC derivatives contracts cleared are appropriately mitigated, taking into account the criteria listed above.[419] CCPs must inform the Competent Authority and their Clearing Members of the criteria used to determine the margin percentage for each class of financial instruments. • ***Time horizon for the calculation of historical volatility***. A CCP must calculate IM using historical volatility data from at least the latest 12-month period, which must capture a full range of market conditions, including periods of stress.	energy commodities, and metals, one day; (iii) for all other swaps, five days; or, (iv) such longer liquidation time as is appropriate based on the specific characteristics of a particular product or portfolio.[439] • ***Portfolio margining.*** A DCO may calculate margin with respect to a portfolio as long as any reduction in initial margin requirement is based upon significant and reliable correlations in price risk, as described below.[440] A DCO must collect initial margin on a gross basis for each clearing member's customer account(s) equal to the sum of the initial margin amounts that would be required by the DCO for each individual customer within that account if each individual customer were a clearing	with the view that a CA should provide reductions in initial margin requirements based on offsetting or inversely correlated positions only if the CA can demonstrate a robust correlation between those position, including under stressed market conditions, the SEC believes that the determination of whether positions are sufficiently correlated to warrant offsets or whether reductions should be provided at all is a matter that should be determined by the CCP as it implements its risk management procedures, and submitted to the Commission for review and public comment, as part of the Section 19b–4.452 The SEC issued an Exemptive Order permitting DCO/CAs to commingle and portfolio margin customer positions in cleared CDSs in a segregated account subject to certain conditions.[453]		*may contain legally binding provisions equivalent to those of EMIR.* The margin requirements under EMIR are more prescriptive than the corresponding SEC provisions, with specific liquidation and look back period requirements, whereas the SEC regime leaves it to a CA to determine the best methodology to use. A CA is not specifically required to call and collect margins on an intraday basis; however, the SEC suggests that CCPs should monitor exposure and margin coverage on an intraday basis depending on the individual risk characteristics of their members and businesses, and adjust their risk management processes as needed. When calculating IM, a CA must use at least a 99% minimum confidence interval, whereas a CCP under EMIR must use a 99.5% minimum confidence interval for OTC derivatives, unless they have the same risk characteristics as derivatives executed on a regulated market or equivalent third country market, in which case the minimum is 99%. The SEC regime does not require specified look back periods, leaving it to the CA to determine the best

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CCPs may decide how different observations are weighted in the model and may use other look back periods, provided that they result in IMs which are at least as high as those which would be required under the prescribed period. Margin parameters for financial instruments without historical observation period must be based on conservative assumptions.[420] • ***Time horizons for the liquidation period.*** The liquidation period used to calculate IM must be at least: (i) for OTC derivatives, 5 business days; and (ii) for other financial instruments, 2 business days, it being specified that the CCP must take into account relevant criteria (including characteristics of the financial instruments, markets where they are traded, period for calculation and collection of margin).[421] However, CCPs may use	member.[441] A DCO must require its clearing members to collect customer initial margin from their customers, for non-hedge positions, at a level that is greater than 100 percent of the DCO's initial margin requirements with respect to each product and swap portfolio.[442] A DCO may allow reductions in initial margin requirements for related positions if the price risks with respect to such positions are significantly and reliably correlated. The price risks of different positions will only be considered to be reliably correlated if there is a theoretical basis for the correlation in addition to an exhibited statistical correlation. That theoretical basis may include, but is not limited to, scenarios where (i) the products on which the positions are based are	• ***Procyclicality***. No corresponding provisions.		methodology. The SEC regime does not require specified liquidation periods, leaving it to the CA to determine the best methodology. Unlike CCPs under EMIR, a CA is not limited generally to a maximum reduction of 80% of the difference between (i) the sum of the IMs for each instrument calculated on an individual basis and (ii) the IM calculated based on a combined estimation of the exposure for the combined portfolio. A CA is not specifically required to ensure that its policy for selecting and revising the confidence interval, liquidation period and look back period deliver stable and prudent margin requirements that limit procyclicality to the extent that the soundness and financial security of the CCP are not affected. ***CFTC – SIDCOs and Opt-In DCOs.*** *Taken in conjunction with the corresponding CFTC provisions for DCOs, the CFTC regime for SIDCOs and Opt-In DCOs includes margin requirements. Based on a review of the legally binding requirements which are applicable, at a jurisdictional level, to SIDCOs and Opt-In DCOs subject to regulation by the*

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an alternative liquidation period of at least 2 business days for OTC derivatives that have the same risk characteristics as derivatives executed on regulated market or equivalent third country market, provided that it can prove to its competent authority that such a period would be more appropriate in view of the specific features of the relevant OTC derivative. [422] In all cases, for the determination of the appropriate liquidation period, the CCP must evaluate and sum at least (i) the longest period that may elapse from the last collection of margins up to the declaration of default or activation of default management process by the CCP and (ii) the estimated period needed to design and execute the strategy for the management of default of a Clearing Member according to the characteristics of each class of fi-	complements of, or substitutes for, each other; (ii) one product is a significant input into the other product(s); (iii) the products share a significant common input; or (iv) the prices of the products are influenced by common external factors. A DCO must regularly review its margin reductions and the correlations on which they are based.[443] The CFTC is consulting with the SEC regarding additional portfolio margining rulemakings.[444] • ***Procyclicality***. No corresponding provisions.			*CFTC, these requirements are not equivalent to those of EMIR. However, the internal policies, procedures, rules, models and methodologies of individual SIDCOs and Opt-In DCOs, which are out of the scope of this assessment, may contain legally binding provisions equivalent to those of EMIR.*

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nancial instruments and (iii) where applicable, the period needed to cover the counterparty risk to which the CCP is exposed. • ***Portfolio margining.*** A CCP may allow for offsets or reductions to the required margin across financial instruments cleared by the CCP if the price risk of one or a set of instruments is significantly and reliably correlated, or based on equivalent statistical parameters of dependence, with other instruments. The CCP must document its approach on portfolio margining and must at least establish that the relevant correlation is reliable over the relevant look back period and demonstrates resilience over stressed scenarios. The maximum reduction is 80% of the difference between (i) the sum of the IMs for each instrument calculated on an individual basis and (ii) the IM				

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calculated based on a combined estimation of the exposure for the combined portfolio. Where a CCP is not exposed to any potential risk from the margin reduction, it may apply a reduction of up to 100% of this difference.[423] • ***Procyclicality.*** A CCP must ensure that its policy for selecting and revising the confidence interval, liquidation period and look back period deliver stable and prudent margin requirements that limit procyclicality to the extent the soundness and financial security of the CCP are not affected. A CCP must choose from a menu of margin-setting options to address procyclicality risks: (i) applying a margin buffer of at least 25% that the CCP allows to be temporarily exhausted in periods where IM requirements are rising significantly; (ii) assigning at least a 25% weight to stressed obser-				

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vations in the look back period; and (iii) ensuring that the CCP's IM requirements are not lower than those that would be calculated using a volatility estimated over a ten-year historical look back period.[424]				
Default fund A CCP must maintain a pre-funded default fund to cover losses that exceed those losses to be covered by margin requirements arising from the default (including insolvency procedure) of one or more Clearing Members. A CCP must establish (i) a minimum amount below which the size of the default fund may not fall in any circumstances, and (ii) a minimum size and criteria to determine Clearing Member contributions to the default fund, which must be proportionate to the exposures of each Clearing Member.[454] The default fund must enable to the CCP to withstand, under	***Default fund*** A DCO must maintain financial resources sufficient to enable the DCO to meet its financial obligations to its clearing members notwithstanding a default by the clearing member creating the largest financial exposure for the DCO in extreme but plausible market conditions. These financial resources may include margin, DCO capital, guaranty fund deposits, default insurance and potential assessments for additional guaranty fund contributions under DCO rules (subject to specified limits). Financial resources will be	***Default fund*** Under SEC guidance, a CA should establish by rule an appropriate level of clearing fund contributions based, among other things, on its assessment of the risks to which it is subject. Contributions to the clearing fund it should be based on a formula which applies to all users on a uniform, non-discriminatory basis.[463] A CA that performs CCP services must maintain sufficient financial resources to withstand, at a minimum, a default by the clearing member family to which it has the largest exposure in extreme but plausible market	***Default fund*** Under proposed CFTC Rules, a SIDCO or Opt-in DCO systemically important in multiple jurisdictions, or that is involved in activities with a more complex risk profile, must meet a Cover Two requirement, i.e. financial resources sufficient to enable it to meet its financial obligations to its clearing members notwithstanding a default by the two clearing members creating the largest combined financial exposure in extreme but plausible market conditions. Moreover, where a clearing member controls another clearing member or is under common control with another clearing member,	***Default fund*** ***CFTC - DCOs.*** *The CFTC regime for DCOs includes default fund requirements. Based on a review of the legally binding requirements which are applicable, at a jurisdictional level, to DCOs subject to regulation by the CFTC, these requirements are not equivalent to those of EMIR. However, the internal policies, procedures, rules, models and methodologies of individual DCOs, which are out of the scope of this assessment, may contain legally binding provisions equivalent to those of EMIR.* CFTC Rules allow part of a DCO's default fund to comprise unfunded elements such as assessment rights. A DCO is required to maintain financial resources sufficient to meet its financial

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extreme but plausible market conditions, the default of (i) the Clearing Member to which it has the largest exposure, or (ii) the Clearing Members to which it has the second and third largest exposures, if the sum of their exposures is greater. A CCP must develop scenarios of extreme but plausible market conditions, which take into account past volatility and scenarios of sudden sales of financial resources and rapid reductions in market liquidity.[455] A CCP may establish more than one default fund for the different classes of financial instruments that it clears.[456] • ***Framework and governance.*** In order to determine the minimum size of default fund, a CCP must implement an internal policy framework for defining the types of extreme but plausible market conditions that could expose it to the greatest risk.[457]	considered sufficient if their value, at a minimum, exceeds the total amount that would: • enable the DCO to meet its financial obligations to its clearing members notwithstanding a default by the clearing member creating the largest financial exposure for the DCO in extreme but plausible market conditions, and • enable the DCO to cover its operating costs for a period of at least one year, calculated on a rolling basis.[460] • ***Framework and governance.*** Under proposed CFTC Rules, a DCO must have a Risk Management Committee that will advise the board on significant changes to the DCO's risk model and default procedures.[461] • ***Identifying extreme but plausible market***	conditions;[464] and, a registered CA acting as a CCP for SBS must maintain additional financial resources sufficient to withstand, at a minimum, a default by the two clearing member families to which it has the largest exposures with respect to SBS.[465] A CA can choose to maintain a separate default fund for SBS, limiting the overall financial burden.[466] • ***Framework and governance.*** No corresponding provisions. • ***Identifying extreme but plausible market conditions.*** No corresponding provisions. • ***Reviewing extreme but plausible scenarios.*** No corresponding provisions.	then SIDCOs and Opt-In DCOs must treat such affiliated clearing members as a single clearing member for the purposes of the Cover Two requirement. [467] • ***Framework and governance.*** No corresponding provisions. • ***Identifying extreme but plausible market conditions.*** No corresponding provisions. • ***Reviewing extreme but plausible scenarios.*** No corresponding provisions.	obligations to its clearing members notwithstanding a default by the clearing member creating the largest financial exposure for the DCO. Whereas under EMIR, a CCP's default fund must also enable it to withstand the default of the clearing members to which it has the second and third largest exposures, if the sum of their exposures is greater than the clearing member to which it has the largest exposure. EMIR prescribes a specific list of items to be incorporated into a CCP's framework for determining the size of the default fund, whereas the CFTC regime is more general. Nevertheless, a DCO is required to perform on a monthly basis stress testing that will allow it to make a reasonable calculation of the financial resources needed to meet its financial resources requirement. The methodology must take into account both historical data and hypothetical scenarios. The CFTC may review the methodology and require changes as appropriate. The CFTC regime does not specifically require a DCO's board to annually or more frequently review its minimum financial resources framework. ***SEC.*** *The SEC regime for CAs includes default fund requirements which are*

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• ***Identifying extreme but plausible market conditions.*** This framework must: (a) reflect the risk profile of the CCP, taking into account cross-border and cross-currency exposures; (b) identify the market risks to which a CCP would be exposed following the default of one or more Clearing Members for all relevant markets; (c) reflect additional risks to the CCP arising from the simultaneous failure of entities in the same group as the Defaulting Clearing Member; (d) individually identify all of the markets to which a CCP is exposed in a Clearing Member default scenario, and for each identified market specify extreme but plausible conditions based on (i) a range of historical scenarios,	***conditions.*** A DCO must, on a monthly basis, perform stress testing that will allow it to make a reasonable calculation of the financial resources needed to meet the financial resources requirement described under the first bullet point above. The methodology must take into account both historical data and hypothetical scenarios. The CFTC may review the methodology and require changes as appropriate. [462]			*applicable, at a jurisdictional level, to CAs subject to regulation by the SEC, and which are broadly equivalent to those of EMIR but only for CAs acting as a CCP for SBS. For other CAs, the internal policies, procedures, rules, models and methodologies of individual CAs, which are out of the scope of this assessment, may contain legally binding provisions equivalent to those of EMIR.* The SEC regime allows part of a CA's default fund to comprise unfunded elements such as assessment rights. The SEC regime requires a CA acting as a CCP for SBS to maintain additional financial resources sufficient to withstand, at a minimum, a default by the two clearing member families to which it has the largest exposures with respect to SBS ("Cover Two"). EMIR prescribes a specific list of items to be incorporated into the framework for determining the size of the default fund, whereas the SEC regime is more general and relies on the supervisory process. A CA is not specifically required to take into account itemized considerations when defining the types of extreme but plausible market conditions that would expose it to the greatest risk; however, to ensure the

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including periods of extreme market movements observed over the previous 30 years (or as long as reliable data is available); and (ii) a range of potential future scenarios, considering the extent to which extreme price movements could occur on multiple markets simultaneously.[458] • ***Reviewing extreme but plausible scenarios.*** The framework must be discussed by the risk committee, approved by the board and subject to review at least annually and more frequently if justified by market developments or material changes to the contracts cleared by the CCP. Material changes to the framework must be reported to the board.[459]				standard is consistently applied across CAs and that it accurately captures the market understanding of the terminology, the SEC expects to review and publish for public comment rule proposals from CAs adopting a definition for "extreme but plausible market conditions" that is appropriate for the market they serve. On balance, these differences do not undermine the consistency of the objectives of the SEC and EMIR regimes in respect of CAs acting as a CCP for SBS. ***CFTC – SIDCOs and Opt-In DCOs.*** *Taken in conjunction with the corresponding CFTC provisions for DCOs, the CFTC regime for SIDCOs and Opt-In DCOs includes default fund requirements. Based on a review of the legally binding requirements which are applicable, at a jurisdictional level, to SIDCOs and Opt-In DCOs subject to regulation by the CFTC, these requirements are not equivalent to those of EMIR. However, the internal policies, procedures, rules, models and methodologies of individual SIDCOs and Opt-In DCOs, which are out of the scope of this assessment, may contain*

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				legally binding provisions equivalent to those of EMIR.
Other financial resources A CCP must maintain sufficient pre-funded available financial resources ("pre-funded financial resources") to cover potential losses that exceed losses to be covered by margin requirements and the default fund. The combination of a CCP's default fund and pre-funded financial resources must be sufficient to cover the default of the two Clearing Members to which it has the largest exposure under extreme but plausible market conditions. Pre-funded financial resources must include dedicated resources of the CCP, must be freely available to the CPP and may not be used to meet a CCP's regulatory capital requirements under EMIR, Art. 16. [468] A CCP may require a non-defaulting Clearing Member to provide additional funds in the	***Other financial resources*** Financial resources will be considered sufficient if their value, at a minimum, exceeds the total amount that would: • enable the DCO to meet its financial obligations to its clearing members notwithstanding a default by the clearing member creating the largest financial exposure for the DCO in extreme but plausible market conditions, and • enable the DCO to cover its operating costs for a period of at least one year, calculated on a rolling basis.[470] A DCO must maintain financial resources sufficient to cover its exposures with a high degree of confidence and to enable it to perform its functions in compliance with DCO core principles. A DCO	***Other financial resources*** A CA that performs CCP services must maintain sufficient financial resources to withstand, at a minimum, a default by the clearing member family to which it has the largest exposure in extreme but plausible market conditions. A registered CA acting as a CCP for SBS must maintain additional financial resources sufficient to withstand, at a minimum, a default by the two clearing member families to which it has the largest exposures with respect to SBS.[473] A CA must limit its exposures to potential losses from defaults by its clearing members in normal market conditions so that the operations of the CA would not be disrupted and non-defaulting clearing members would not be exposed to losses that they cannot anticipate or	***Other financial resources*** Under proposed CFTC Rules, a SIDCO or Opt-in DCO systemically important in multiple jurisdictions, or that is involved in activities with a more complex risk profile, must meet a Cover Two requirement, i.e. financial resources sufficient to enable it to meet its financial obligations to its clearing members notwithstanding a default by the two clearing members creating the largest combined financial exposure in extreme but plausible market conditions. Moreover, where a clearing member controls another clearing member or is under common control with another clearing member, then SIDCOs and Opt-In DCOs must treat such affiliated clearing members as a single clearing member for the purposes of the Cover Two requirement. [475]	***Other financial resources*** ***CFTC - DCOs.*** *The CFTC regime for DCOs includes other financial resources requirements. Based on a review of the legally binding requirements which are applicable, at a jurisdictional level, to DCOs subject to regulation by the CFTC, these requirements are not equivalent to those of EMIR. However, the internal policies, procedures, rules, models and methodologies of individual DCOs, which are out of the scope of this assessment, may contain legally binding provisions equivalent to those of EMIR.* A DCO is not specifically required to maintain financial resources sufficient to cover the default of the two clearing members to which it has the largest exposure under extreme but plausible market conditions. Instead, a DCO must maintain financial resources sufficient to (i) cover a default by the clearing member creating the largest financial exposure for the DCO in extreme but plausible market conditions and (ii) to cover its operating costs for a period of at least one year, calculated on a rolling

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event of a default of another Clearing Member. The Clearing Members of a CCP must have limited exposure to the CCP.[469]	must hold sufficient liquid resources to cover potential business losses that are not related to clearing members' defaults, so that the DCO can continue to provide services as an on-going concern.[471] A DCO must have risk control mechanisms that limit its exposure to potential losses from clearing member defaults to ensure that non-defaulting clearing members will not be exposed to losses that they cannot anticipate or control.[472]	control.[474]		basis. A DCO must also hold sufficient liquid resources to cover potential business losses that are not related to clearing members' defaults, so that the DCO can continue to provide services as an on-going concern. Clearing members are required to have limited exposure to a CCP. Clearing members are not required to have limited risk to a DCO, but DCO risk control mechanisms must ensure that non-defaulting members will not be exposed to losses they cannot anticipate or control. ***SEC.*** *The SEC regime for CAs includes other financial resources requirements which are applicable, at a jurisdictional level, to CAs subject to regulation by the SEC, and which are broadly equivalent to those of EMIR but only for CAs acting as a CCP for SBS. For other CAs, the internal policies, procedures, rules, models and methodologies of individual CAs, which are out of the scope of this assessment, may contain legally binding provisions equivalent to those of EMIR.* Under SEC Rules, CAs acting as a CCP for SBS must maintain additional financial resources sufficient to cover

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				the default of the two clearing members to which it has the largest exposure under extreme but plausible market conditions, but CAs not acting as a CCP for SBS are not required to meet this standard. The SEC regime does not include an express requirement that CAs have pre-funded financial resources freely available to the CA and not used to meet regulatory capital requirements, although CAs are required to have adequate operational resources. Clearing members are required to have limited exposure to a CCP. For a CA, risk control mechanisms must ensure that non-defaulting members will not be exposed to losses they cannot anticipate or control. On balance, these differences do not undermine the consistency of the objectives of the SEC and EMIR regimes in respect of CAs acting as a CCP for SBS. ***CFTC – SIDCOs and Opt-In DCOs.*** *Taken in conjunction with the corresponding CFTC provisions for DCOs, the CFTC regime for SIDCOs and Opt-In DCOs includes other financial re-*

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				sources requirements which are applicable, at a jurisdictional level, to SIDCOs and Opt-In DCOs subject to regulation by the CFTC, and which are broadly equivalent to those of EMIR as longs as those SIDCOs and Opt-In DCOs have been considered by the CFTC as being systemically important in multiple jurisdictions, or involved in activities with a more complex risk profile. If it is not the case, the internal policies, procedures, rules, models and methodologies of individual SIDCOs and Opt-In DCOs, which are out of the scope of this assessment, may contain legally binding provisions equivalent to those of EMIR.
Liquidity risk controls A CCP must at all times have access to adequate liquidity to perform its services and activities.[476] To this effect, it must obtain the necessary credit lines or similar arrangements to cover its liquidity needs in case the financial resources at its disposal are not immediately available. A CCP must measure its potential liquidity	***Liquidity risk controls*** A DCO must effectively measure, monitor, and manage its liquidity risks, maintain sufficient liquid resources such that it can, at a minimum, fulfil its cash obligations when due, and hold assets in a manner where the risk of loss or of delay in its access to them is minimised.[481]	***Liquidity risk controls*** • ***Assessment of liquidity risk.*** No corresponding provisions. • ***Access to liquidity.*** A CA must establish, implement, maintain and enforce written policies and procedures reasonably designed to hold assets in a manner that minimises risk of loss or of delay in	***Liquidity risk controls*** • ***Assessment of liquidity risk.*** Under proposed CFTC Rules, SIDCOs and Opt-In DCOs must maintain eligible liquidity resources, in an amount sufficient to meet a Cover One requirement, i.e. liquidity resources sufficient to enable it to meet its financial obligations to its clearing members not-	***Liquidity risk controls*** ***CFTC - DCOs.*** *The CFTC regime for DCOs includes liquidity risk control requirements. Based on a review of the legally binding requirements which are applicable, at a jurisdictional level, to DCOs subject to regulation by the CFTC, these requirements are not equivalent to those of EMIR. However, the internal policies, procedures, rules, models and methodologies of individual DCOs, which are out of the scope of this assessment, may contain legally*

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needs daily, taking into account the liquidity risk generated by the default of at least the two Clearing Members to which it has the largest exposures.[477] A CCP must establish a robust liquidity risk management framework to identify measure and monitor its settlement and funding flows, including its use of intraday liquidity. The CCP's liquidity risk management framework must ensure with a high level of confidence that the CCP is able to effect payment and settlement obligations in all relevant currencies as they fall due, including where appropriate intraday. • ***Assessment of liquidity risk.*** The framework should also include: (i) the assessment of potential future liquidity needs under a wide range of stress scenarios, including the default of the two Clearing Members to which it has the largest exposure from the date of	The financial resources allocated by the DCO to meet its obligations to its clearing members including upon default by the clearing member creating the largest financial exposure for the DCO must be sufficiently liquid to enable the DCO to fulfil its obligations as a CCP during a one-day settlement cycle.[482] • ***Assessment of liquidity risk.*** A DCO must maintain an accurate record of the flow of funds associated with each money settlement, complete money settlements on a timely basis (but not less frequently than once each business day) [483] and have the authority and operational capacity to effect a settlement with each clearing member on an intraday basis.[484] • ***Access to liquidity.*** The financial resources allocated by a DCO to meet its operating costs for a year must include unencumbered, liquid financial as-	its access to them.[490] A CA must establish, implement, maintain and enforce written policies and procedures reasonably designed to invest assets in instruments with minimal liquidity risks and establish default procedures that ensure the CA can take timely actions to contain losses and liquidity pressures and continue to meet its obligations in the event of a clearing member default.[491] A CA must establish, implement, maintain and enforce written policies and procedures reasonably designed to employ money settlement arrangements that eliminate or strictly limit the CA's credit and liquidity risks from the use of settlement banks to effect settlement with clearing members.[492] • ***Concentration risk.***	withstanding a default by the clearing member creating the largest liquidity exposure in extreme but plausible market conditions. Such resources must also enable the SIDCO or Opt-In DCO to meet its intraday, same-day, and multiday settlement obligations, with a high degree of confidence under a wide range of stress scenarios. The SIDCO or Opt-In DCO must maintain liquidity resources that are sufficiently liquid to satisfy the obligations in all relevant currencies for which they have settlement obligations The SIDCO or Opt-In DCO is required to monitor their liquidity providers in a manner consistent with PFMI 7: liquidity provider to mean any of the following: (i) A depository institution, an edge or agreement corporation, a U.S.	*binding provisions equivalent to those of EMIR.* A DCO must measure its liquidity needs by taking into account a default by the clearing member creating the largest financial exposure for the DCO, rather than the default of at least the two clearing members to which it has the largest exposures; however, a DCO must additionally maintain unencumbered, liquid financial assets equal to at least six month's operating costs. A DCO must maintain liquidity to fulfil its obligations as a CCP during a one-day settlement cycle, whereas under EMIR a CCP must maintain liquidity to fulfil settlement obligations as they fall due, including potentially intraday. Assets in a DCO's guaranty fund must be accessible on a same-day basis and may not include letters of credit. CCPs under EMIR are subject to more explicit requirements and procedures than DCOs with respect to the establishment of a liquidity framework. The CFTC regime does not specifically require a DCO to have its liquidity plan approved by the board after consultation with the risk committee, but the DCO must have a risk committee and the DCO's board must approve the DCO's

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default until the end of the liquidation period; and (ii) the liquidity risk generated by its investment policy in extreme but plausible conditions.[478] The framework must include a liquidity plan approved by the board after consultation of the risk committee containing procedures relating to the monitoring and management of liquidity risk (including inter alia identification of sources of liquidity risk, daily assessment and valuation of liquid assets to cover liquidity needs, assessing timescales over which liquid financial resources should be available, processes in the event of liquidity shortfalls, etc.). The CCP should assess the liquidity risk it faces including where the CCP or its Clearing Members cannot settle their	sets (i.e., cash and/or highly liquid securities) equal to at least six months' operating costs. If any portion of such financial resources is not sufficiently liquid, the DCO may take into account a committed line of credit or similar facility for the purpose of meeting this requirement.[485] Assets in a guaranty fund must be readily accessible on a same-day basis. Letters of credit are not a permissible asset for a guaranty fund.[486] The DCO must maintain cash, U.S. Treasury obligations, or high quality, liquid, general obligations of a sovereign nation, in an amount greater than or equal to an amount calculated as follows: (i) calculate the average daily settlement pay for each clearing member over the last fiscal quarter; (ii) calculate the sum of those average daily settlement	No corresponding provisions.	branch and agency of a foreign banking organization, or a trust company providing settlement services to the SIDCO or Opt-In DCO; (ii) A depository institution, an edge or agreement corporation, a U.S. branch and agency of a foreign banking organization, a trust company, or syndicate of depository institutions, edge or agreement corporations, U.S. branches and agencies of foreign banking organizations, or a trust companies providing a line of credit, foreign exchange swap facility or repurchase facility to the SIDCO or Opt-In DCO; and (iii) Any other counterparty relied upon by a SIDCO or Opt-In DCO to meet its minimum liquidity resources The SIDCO or Opt-In DCO must regularly test their procedures for accessing their liquidity resources and document their supporting rationale for, and	policies, procedures and controls establishing its risk (including liquidity risk) management framework. A DCO is not specifically required to assess the liquidity risk it faces where it or its clearing members cannot settle their payment obligations when due, although a DCO must have an adequate liquidity risk management framework. DCOs must maintain a prescribed portion of their liquidity in liquid investments and can only rely on credit lines above these prescribed amounts. A DCO is not specifically required to monitor the concentration of its liquidity risk exposure, although a DCO must have an adequate liquidity risk management framework. ***SEC.*** *The SEC regime for CAs includes liquidity risk control requirements. Based on a review of the legally binding requirements which are applicable, at a jurisdictional level, to CAs subject to regulation by the SEC, these requirements are not equivalent to those of EMIR. However, the internal policies, procedures, rules, models and methodologies of individual CAs, which are out of the scope of this assessment, may contain legally binding provisions*

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payment obligations when due as part of the clearing or settlement process, taking also into account the CCP's investment activities. The risk management framework must address the liquidity needs stemming from the CCP's relationship with any entity towards which the CCP has a liquidity exposure, including settlement banks, payment systems, securities settlement systems, liquidity providers, custodian banks, etc. as well as interdependencies between such entities. • ***Access to liquidity.*** A CCP must maintain, in each relevant currency, liquid resources commensurate with its liquidity requirements, which are limited to: (i) cash deposited at a central bank; (ii) cash deposited at authorised credit institutions; (iii) committed	pays; and, (iii) using that sum, calculate the average of its clearing members' average pays.[487] The remainder of the financial resources necessary for this purpose may be in the form of a committed line of credit or similar facility.[488] A DCO must employ money settlement arrangements to eliminate or strictly limit the exposure of the DCO to settlement bank risks (including credit and liquidity risks from the use of banks to effect money settlements).[489] • ***Concentration risk.*** No corresponding provisions.		have appropriate governance arrangements relating to, the amount of total financial resources and the amount of total liquidity resources they maintain. • ***Access to liquidity.*** Under proposed CFTC Rules, a SIDCO or Opt-In DCO can count only certain types of liquidity resources to satisfy the minimum liquidity requirement among these "qualifying liquidity resources" are "committed lines of credit," "committed foreign exchange swaps," and "committed repurchase agreements." SIDCOs and Opt-In DCOs are required to take appropriate steps to verify that its qualifying liquidity arrangements do not include material adverse change provisions and are enforceable, and will be reliable, in extreme but plausible market condi-	*equivalent to those of EMIR.* EMIR is more specific than the corresponding SEC regime, which relies on the supervisory process. The SEC Rules governing liquidity risk management are more general and less specific than those under EMIR. The SEC regime does not specifically require CAs to establish a robust liquidity risk management framework that includes the assessment of potential future liquidity needs under a wide range of stress scenarios or the liquidity risk generated by its investment policy in extreme but plausible conditions; however, a CA may only invest in assets with limited liquidity risks and must take timely actions to contain losses and liquidity pressures in the event of a clearing member default. The SEC regime does not specifically require a CA's board to approve its liquidity plan. The SEC regime does not specifically require a CA to have a liquidity plan that assesses the liquidity risk it faces where the CA or its clearing members cannot settle their payment obligations when due as part of the clearing or settlement process, taking also into account the

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lines of credit with non-Defaulting Clearing Members; (iv) committed repurchase agreements; and (v) highly marketable financial instruments which can demonstrably be converted into cash on a same-day basis including in stressed market conditions.[479] • ***Concentration risk.*** A CCP must closely monitor the concentration of its liquidity risk exposure, and the framework should include the application of exposure and concentration limits.[480]			tions. • ***Concentration risk.*** Under proposed CFTC Rules, a SIDCO or Opt-In DCO would be required to monitor and manage the concentration of credit and liquidity exposures to its settlement banks.[493]	CA's investment activities. The SEC regime does not specifically require a CA to maintain, in each relevant currency, liquid resources commensurate with its liquidity requirements. CAs are not specifically required to monitor the concentration of their liquidity risk exposure or to apply exposure or concentration limits. ***CFTC – SIDCOs and Opt-In DCOs.*** *Taken in conjunction with the corresponding CFTC provisions for DCOs, the CFTC regime for SIDCOs and Opt-In DCOs is proposed to include liquidity requirements which are applicable, at a jurisdictional level, to SIDCOs and Opt-In DCOs subject to regulation by the CFTC, and which are broadly equivalent to those of EMIR.*
Default waterfall Losses caused by the default of a Clearing Member (a "Defaulting Clearing Member") should be covered by, in order: (i) the margins posted by the Defaulting Clearing Member; (ii) the	***Default waterfall*** • ***Calculation of the amount of the CCP's own resources to be used in the default waterfall.*** No corresponding provisions.	***Default waterfall*** • ***Calculation of the amount of the CCP's own resources to be used in the default waterfall.*** No corresponding provisions.	***Default waterfall*** • ***Calculation of the amount of the CCP's own resources to be used in the default waterfall.*** No corresponding provisions.	***Default waterfall*** ***CFTC – DCOs.*** *The CFTC regime for DCOs includes default waterfall requirements. Based on a review of the legally binding requirements which are applicable, at a jurisdictional level, to DCOs subject to regulation by the CFTC, these requirements are not*

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default fund contribution of the Defaulting Clearing Member; (iii) the CCP's dedicated financial resources; and (iv) the default fund contributions of other Clearing Members (the "default waterfall"). A CCP must use its own dedicated resources before using the default fund contributions of non-defaulting Clearing Members and may not use margin posted by non-defaulting Clearing Members to cover losses caused by a Defaulting Clearing Member.[494] • ***Calculation of the amount of the CCP's own resources to be used in the default waterfall.*** A CCP must keep, and indicate separately in its balance sheet, an amount of dedicated financial resources for the purposes of item (iii) of the default waterfall. This amount should at least equal 25% of the CCP's minimum capital (including retained earnings and reserves) pursu-	• ***Maintenance of the amount of the CCP's own resources to be used in the default waterfall.*** A DCO must adopt rules that set forth its default procedures, including: (i) the sequence in which the funds and assets of the defaulting clearing member and its customers and the financial resources maintained by the DCO would be applied in the event of a default; (ii) a provision that the funds and assets of a defaulting clearing member's customers will not be applied to cover losses with respect to a house default; (iii) a provision that the excess house funds and assets of a defaulting clearing member will be applied to cover losses with respect to a customer default, if the relevant customer funds and assets are insufficient to cover the shortfall.[497] A DCO must report to the CFTC within one business day	• ***Maintenance of the amount of the CCP's own resources to be used in the default waterfall.*** A CA must establish written policies and procedures reasonably designed to establish default procedures that ensure that the CA can take timely action to contain losses and liquidity pressures and to continue meeting its obligations in the event of the default of the clearing member to which it has the largest exposure in extreme but plausible market conditions.[500] Under SEC guidance, the rules of the CA should limit the purposes for which its clearing fund may be used to protecting clearing members and the CA (1) from the defaults of clearing members and (2) from CA losses (not including day-to-day operating expenses) such as losses of securities not covered by insurance or	• ***Maintenance of the amount of the CCP's own resources to be used in the default waterfall.*** No corresponding provisions.	*equivalent to those of EMIR. However, the internal policies, procedures, rules, models and methodologies of individual DCOs, which are out of the scope of this assessment, may contain legally binding provisions equivalent to those of EMIR.* A DCO is not specifically required to apply the same default waterfall sequence as prescribed under EMIR for a CCP; however, a DCO is required to adopt a default waterfall sequence in its rules. A DCO is not required to include a prescribed amount of its own resources as part of the default waterfall as is required under EMIR of a CCP. A DCO's reporting obligations to the CFTC relate to its financial resources overall, whereas a CCP's obligation to report arises if its dedicated financial resources fall below the required amount. ***SEC*** *The SEC regime for CAs includes default waterfall requirements. Based on a review of the legally binding requirements which are applicable, at a jurisdictional level, to CAs subject to regulation by the SEC, these*

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ant to EMIR, Art. 16.[495] This amount will be revised on a yearly basis. Where the CCP has established more than one default fund for the different classes of financial instruments it clears, the total dedicated own resources must be allocated to each default fund in proportion to its size, to be separately indicated in the balance sheet and used for defaults arising in the relevant market segments. No resources other than capital can be used to comply with this requirement. • ***Maintenance of the amount of the CCP's own resources to be used in the default waterfall.*** A CCP must immediately inform its CCPs Competent Authority if the amount of dedicated financial resources falls below the required amount, together with the reason for the breach and a description of the	if its financial resources available to satisfy obligations to clearing members drop by more than 25 percent, either from the last quarterly report filed with the CFTC or from the previous business day.[498] A DCO must provide to the CFTC immediate notice upon the default of a clearing member. An event of default must be determined in accordance with the rules of the DCO. The notice of default must include: (i) the name of the clearing member; (ii) the products the clearing member defaulted upon; (iii) the number of positions the clearing member defaulted upon; and, (iv) the amount of the financial obligation.[499]	other resources of the CA.[501] Under SEC guidance, with respect to further assessing a CA clearing member to cover losses other than losses solely attributable to the clearing member, the CA's rules should provide for a maximum assessment which is fixed by the CA's rules.[502]		*requirements are not equivalent to those of EMIR. However, the internal policies, procedures, rules, models and methodologies of individual CAs, which are out of the scope of this assessment, may contain legally binding provisions equivalent to those of EMIR.* A CA is not specifically required to apply the same default waterfall sequence as is prescribed under EMIR for a CCP. A CA is not required to include a prescribed amount of its own resources in the default fund waterfall as is required under EMIR of a CCP. A CA is not specifically required to inform the SEC if its financial resources fall below a certain amount. ***CFTC – SIDCOs and Opt-In DCOs.*** *Taken in conjunction with the corresponding CFTC provisions for DCOs, the CFTC regime for SIDCOs and Opt-In DCOs includes default waterfall requirements. . Based on a review of the legally binding requirements which are applicable, at a jurisdictional level, to SIDCOs and Opt-In DCOs subject to regulation by the CFTC, these requirements are not equivalent to those of EMIR. However, the internal policies, procedures, rules, models and methodologies of individual SIDCOs*

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measures to be taken to remedy the breach (which must be remedied within one month).[496]				*and Opt-In DCOs, which are out of the scope of this assessment, may contain legally binding provisions equivalent to those of EMIR.*
Collateral requirements A CCP must only accept highly liquid collateral with minimal credit and market risk to cover initial and on-going exposure to its Clearing Members. Bank guarantees may be posted as collateral by non-financial counterparties, provided that the CCP takes such guarantees into account when calculating exposure to a bank that is a Clearing Member. A CCP must apply adequate haircuts to reflect the potential for collateral's value to decline over the interval between their last revaluation and the time by which they can be liquidated, taking into account the liquidity risk that may follow the default of a market participant and the concentration risk on certain assets.[503] • ***General policies and valuing collateral.*** A	***Collateral requirements*** A DCO must limit the assets it accepts as initial margin to those that have minimal liquidity risks.[509] A DCO must use prudent valuation practices to value assets posted as initial margin on a daily basis.[510] • ***General policies and valuing collateral.*** A DCO must limit the assets it accepts as initial margin to those that have minimal credit and market risks. A DCO may take into account the specific risk-reducing properties that particular assets have in a particular portfolio. A DCO may accept letters of credit as initial margin for futures and options on futures but must not accept letters of credit as initial margin for swaps.[511]	***Collateral requirements*** • ***General policies and valuing collateral.*** A CA must establish, implement, maintain and enforce written policies and procedures reasonably designed to institute risk controls, including collateral requirements and limits to cover the CA's credit exposure to each clearing member exposure fully, that ensure timely settlement in the event that the clearing member with the largest payment obligation is unable to settle when the CA provides intraday credit to clearing members.[515] • ***Cash collateral.*** No corresponding provisions. • ***Financial instruments, bank guarantees and gold.*** No corre-	***Collateral requirements*** • ***General policies and valuing collateral.*** No corresponding provisions. • ***Cash collateral.*** No corresponding provisions. • ***Financial instruments, bank guarantees and gold.*** No corresponding provisions. • ***Haircuts.*** No corresponding provisions. • ***Concentration limits.*** No corresponding provisions.	***Collateral requirements*** ***CFTC – DCOs.*** *The CFTC regime for DCOs includes collateral requirements. Based on a review of the legally binding requirements which are applicable, at a jurisdictional level, to DCOs subject to regulation by the CFTC, these requirements are not equivalent to those of EMIR. However, the internal policies, procedures, rules, models and methodologies of individual DCOs, which are out of the scope of this assessment, may contain legally binding provisions equivalent to those of EMIR.* In particular, a DCO is not specifically required to accept only highly liquid collateral. Although a DCO must limit the assets it accepts as initial margin to those that have minimal credit, market and liquidity risks. A DCO may accept letters of credit as initial margin for futures and options on futures but may not accept letters of credit as initial margin for swaps. CCPs under EMIR may only accept bank guarantees as collateral from non-

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CCP may accept as collateral, where appropriate and sufficiently prudent, the underlying asset of a derivative contract or the financial instrument that generates the CCP exposure. A CCP must establish and implement transparent policies to assess and monitor the liquidity of assets accepted as collateral and take remedial action where appropriate. For the purpose of valuing highly liquid collateral, a CCP must establish and implement policies and procedures to monitor on a near to real time basis the credit quality, market liquidity and price volatility of each asset accepted as collateral. These policies must be reviewed at least annually and whenever a material change occurs that affects the CCP's risk exposure. A CCP must mark-to-market its collateral on a near to real time basis and, where not possible, a CCP must be	• ***Cash collateral.*** No corresponding provisions. • ***Financial instruments, bank guarantees and gold.*** No corresponding provisions. • ***Haircuts.*** A DCO must apply appropriate reductions in value (haircuts) to reflect credit, market and liquidity risks to the assets that it accepts in satisfaction of initial margin obligations, taking into consideration stressed market conditions, and must evaluate the appropriateness of such haircuts on at least a quarterly basis.[512] • ***Concentration limits.*** A DCO must apply appropriate limitations or charges on the concentration of assets posted as initial margin, as necessary, in order to ensure its ability to liquidate such assets quickly with minimal adverse price effects, and must evaluate the appro-	sponding provisions. • ***Haircuts.*** No corresponding provisions. • ***Concentration limits.*** No corresponding provisions.		financial counterparties and must include those guarantees in its credit assessment if the bank guarantor is a clearing member. The CFTC regime does not specifically address whether DCOs may accept as collateral the underlying asset of a derivative contract or the financial instrument that generates the DCO exposure. The CFTC regime does not specifically require DCOs to establish and implement transparent policies to assess and monitor the liquidity of assets accepted as collateral or to take remedial action where appropriate; however, a DCO must limit the assets it accepts as initial margin to those that have minimal liquidity risks. A DCO must use prudent valuation practices to value assets posted as initial margin on a daily basis, whereas a CCP must monitor on a near to real time basis the credit quality, market liquidity and price volatility of each asset accepted as collateral. The CFTC regime does not specify the types of collateral that are deemed highly liquid or a criteria-based approach to determine whether assets are highly liquid.

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able to demonstrate to the competent authorities that it is able to manage the risks.[504] • ***Cash collateral.*** Cash must be deemed highly liquid collateral if it is denominated in: (i) a currency in which the CCP clears transactions (in the limit of the collateral required to cover the CCP's exposure in that currency); or (ii) a currency the risk of which the CCP can demonstrate with a high degree of confidence to its competent authority that it is able to manage.[505] • ***Financial instruments, bank guarantees and gold.*** A criteria-based approach should be followed to determine other types of assets that can be considered highly liquid (including financial instruments, bank guarantees, and gold). There is no requirement for a minimum amount of collateral to be	priateness of any such concentration limits or charges, on at least a monthly basis.[513] If a DCO permits its clearing members to pledge assets for initial margin while retaining such assets in accounts in the names of such clearing members, the DCO must ensure that such assets are unencumbered and that such a pledge has been validly created and validly perfected in the relevant jurisdiction.[514]			The CFTC regime does not specifically require DCOs to demonstrate to the CFTC that haircuts are calculated in a conservative manner to limit as far as possible procyclical effects. A DCO is not specifically required to determine concentration limits at the levels of individual issuers, types of issuer, types of assets, each clearing member and all clearing members for collateral accepted as initial margin. Nonetheless, a DCO must apply appropriate limitations or charges on the concentration of assets posted as initial margin, as necessary, in order to ensure its ability to liquidate such assets quickly with minimal adverse price effects, and must evaluate the appropriateness of any such concentration limits or charges, on at least a monthly basis. ***SEC*** *The SEC regime for CAs includes collateral requirements. Based on a review of the legally binding requirements which are applicable, at a jurisdictional level, to CAs subject to regulation by the SEC, these requirements are not equivalent to those of EMIR. However, the internal policies, procedures, rules, models and methodologies of individual CAs, which*

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in cash.[506] • ***Haircuts.*** A CCP must establish and implement policies to determine prudent haircuts to apply to collateral value. The CCP must demonstrate to the competent authorities that haircuts are calculated in a conservative manner to limit as far as possible procyclical effects, taking into account relevant criteria (including the type of asset and level of credit risk associated with the financial instrument based on the CCP's internal assessment, which must not rely exclusively on external opinions and which must take into account risk arising from the establishment of the issuer in a particular country; the maturity of the asset; the historical and hypothetical future price volatility of the asset in stressed market conditions; the liquidity of the underlying market, including bid/ask spreads: foreign exchange				*are out of the scope of this assessment, may contain legally binding provisions equivalent to those of EMIR.* EMIR prescribe specific collateral requirements for CCPs, whereas the SEC regime prescribes a standard that requires the CA to institute collateral requirements and limits to cover the CA's credit exposure to each clearing member exposure fully and beyond which the SEC relies on the supervisory process. The SEC regime does not expressly specify what types of collateral are highly liquid. The SEC regime does not prescribe whether CAs may accept as collateral the underlying asset of a derivative contract or the financial instrument that generates CA exposure. The SEC regime does not specifically require CAs to establish and implement transparent policies to assess and monitor the liquidity of assets accepted as collateral on a near to real time basis and take remedial action where appropriate. The SEC regime does not specifically require a CA to consider procyclical effects.

Description of the provision in Title IV of EMIR	Description of the corresponding CFTC provisions for DCOs	Description of the corresponding SEC provisions	Description of corresponding CFTC provisions for SIDCOs and Opt-In DCOs[1]	Assessment of Equivalence
risk, if any; and wrong way risk). A CCP must review the haircut policies at least annually and whenever a material change occurs that affects the CCP's risk exposure but should avoid as far as possible disruptive or big step changes that introduce procyclicality. Such procedures must be independently validated at least annually. [507] • ***Concentration limits.*** A CCP must establish and implement policies to ensure that the collateral remains sufficiently diversified to allow its liquidation within a defined holding period without a significant market impact; such policies must include risk mitigation procedures to be applied when the concentration limits are exceeded. A CCP must determine concentration limits at the levels of individual issuers, types of issuer,				The SEC regime does not specifically require a CA to establish and implement policies to ensure that collateral remains sufficiently diversified to allow its liquidation within a defined holding period. The SEC regime also does not specifically require a CA to establish concentration limits for collateral. However, a CA must hold assets in a manner that minimises the risk of delay in accessing them. ***CFTC – SIDCOs and Opt-In DCOs.*** *Taken in conjunction with the corresponding CFTC provisions for DCOs, the CFTC regime for SIDCOs and Opt-In DCOs includes colleteral requirements. Based on a review of the legally binding requirements which are applicable, at a jurisdictional level, to SIDCOs and Opt-In DCOs subject to regulation by the CFTC, these requirements are not equivalent to those of EMIR. However, the internal policies, procedures, rules, models and methodologies of individual SIDCOs and Opt-In DCOs, which are out of the scope of this assessment, may contain legally binding provisions equivalent to those of EMIR.*

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types of assets, each Clearing Member and all Clearing Members, in a conservative manner, taking into account all relevant criteria (including economic sector, geographic region and activity of issuers, levels of credit risk of instruments and issuers and liquidity and price volatility of instruments). Moreover, a CCP must ensure that no more than 10% of its collateral (25% if more than 50% is in the form of bank guarantees) is guaranteed by a single credit institution or entities of the same group. In calculating the limits, a CCP must include the total exposure of the CCP to an issuer (credit lines, deposits, savings accounts, money-market instruments, reverse repurchase facilities, etc.) and must aggregate and treat as a single risk its exposures to all instruments issued by the				

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issuer or by a group entity, explicitly guaranteed by the issuer or a group entity, as well as instruments issued by undertakings whose exclusive purpose is to own means of production that are essential for the issuer's business. A CCP must review its concentration limit policies at least annually and whenever a material change occurs that affects the risk exposure of the CCP. A CCP must inform the Competent Authority and the Clearing Members of the applicable concentration limits. It must inform the Competent Authority immediately if it breaches such limits and must rectify the breach as soon as possible.[508]				
Investment policy A CCP's investments must be capable of being liquidated rapidly with minimal adverse price effect. Capital not	***Investment policy*** Funds and assets invested by a DCO, including those belonging to clearing members and their customers, must be	***Investment policy*** A CA must establish, implement, maintain and enforce written policies and procedures reasonably designed to	***Investment policy*** • ***Highly liquid financial instruments.*** No corresponding provisions.	***Investment policy*** ***CFTC – DCOs.*** *The CFTC regime for DCOs includes investment policy requirements. Based on a review of the legally binding requirements which are*

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invested in accordance with these rules must not be taken into account for purposes of capital requirement under EMIR, Art. 16 or the default waterfall under EMIR, Art. 45(4). A CCP may not invest its capital or the sums arising from the requirements laid down in Article 41, 42, 43 or 44 (margin, default fund, dedicated own resources, liquidity risk management) in its own securities or those of its parent undertaking or its subsidiaries. [516] • ***Highly liquid financial instruments.*** A CCP must only invest its financial resources in cash or highly liquid financial instruments with minimal market and credit risk. Only debt instruments with low credit and market risk are eligible investments and only where they are issued or guaranteed by a government, central bank, multilateral development bank, the	held in instruments with minimal credit, market, and liquidity risks.[523] A DCO must establish standards and procedures designed to protect and ensure the safety of funds and assets belonging to clearing members and their customers,[524] and hold such assets in a manner that minimises the risk of loss or of delay in the access of the DCO to such funds and assets.[525] • ***Highly liquid financial instruments.*** Assets in a guaranty fund must have minimal credit, market, and liquidity risks and must be readily accessible on a same-day basis. Letters of credit must not be a permissible asset for a guaranty fund.[526] A DCO must adopt rules that set forth its default procedures, including any obligations that the DCO imposes on its clearing members to participate in auctions, or to accept allocations, of the customer or house positions of a defaulting clearing mem-	hold assets in a manner that minimises risk of loss or of delay in its access to them and invest assets in instruments with minimal credit, market and liquidity risks.[532] • ***Highly liquid financial instruments.*** Customer funds may be invested only in certain U.S. government and state obligations or other investments approved by the SEC.[533] SEC staff guidance on Sections 17A (b)(3)(A) and (F) of the Exchange Act provides that the rules of a CCP should limit investment of the cash portion of the clearing fund to U.S. government securities or other investments which provide safety and liquidity of principal and the CCP should develop and maintain plans to assure the safeguarding of securities and funds and recovery of securities, funds under a variety of loss	• ***Highly secured arrangements for the deposit of financial instruments.*** No corresponding provisions. • ***Highly secured arrangements for maintaining cash.*** No corresponding provisions. • ***Concentration limits.*** Under proposed CFTC Rules, a SIDCO or Opt-In DCO should, where reasonable and practicable, use multiple settlement banks instead of one and consider using different settlement banks for different functions, such as depositing funds, investing funds or holding liquidity resources. [537]	*applicable, at a jurisdictional level, to DCOs subject to regulation by the CFTC, these requirements are not equivalent to those of EMIR. However, the internal policies, procedures, rules, models and methodologies of individual DCOs, which are out of the scope of this assessment, may contain legally binding provisions equivalent to those of EMIR.* The CFTC regime is not as strict as EMIR with regards to those financial instruments that are considered highly liquid, and this might result in a DCO investing its capital and the resources received by clearing members in financial instruments that would not be permissible investments under EMIR. When a DCO deposits assets with a third party, the CFTC regime does not specifically require the DCO to ensure that assets belonging to clearing members are identifiable separately from the assets belonging to the DC and from assets belonging to a third party. A DCO is not specifically required to take into account its overall credit risk exposures to individual obligors in making its investment decisions or to ensure that its overall risk exposure to any individual obligor remains within acceptable concentration limits, except

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EFSF or the ESM; the debt instruments must be freely transferable, with price data published regularly and with a diverse group of buyers and sellers including in stressed conditions. The average time-to-maturity of the CCP's portfolio must not exceed two years and the currency of the debt instruments must be one in which the CCP clears transactions or is able to risk manage. Derivative contracts can only be invested in by a CCP as part of the CCP's default management procedure.[517] • ***Highly secured arrangements for the deposit of financial instruments.*** Financial instruments posted with a CCP as margin or default fund contributions must be deposited with operators of securities settlement systems that ensure the full protection of such financial instruments. If unavailable, other highly	ber.[527] • A DCO may only invest futures customer money and Cleared Swaps Customer Collateral in "permitted investments" (as defined in CFTC Regulation 1.25(a)), consistent with the objectives of preserving principal and maintaining liquidity and according to the following specific requirements: (i) investments must be "highly liquid" such that they have the ability to be converted into cash within one business day without material discount in value; (ii) with the exception of money market mutual funds, no permitted investment may contain an embedded derivative of any kind, except as permitted under CFTC Regulation 1.25(b)(ii)(i)(A) and (B); (iii) no instrument may contain interest-only payment features; (iv) no instrument may provide payments linked to a	scenarios[534]. SEC staff guidance on Sections 17A(b)(3)(A) and (F) of the Exchange Act, provides that a CCP should have a clearing fund composed of cash or highly liquid securities contributions[535]. • ***Highly secured arrangements for the deposit of financial instruments.*** No corresponding provisions. • ***Highly secured arrangements for maintaining cash.*** A CA must employ money settlement arrangements that eliminate or strictly limit the clearing agency's settlement bank risks, and evaluate the potential sources of risks that can arise when the clearing agency establishes links either cross-border or domestically to clear or settle trades, and ensure that the risks are managed		as implied under its general obligations with respect to liquidity risk management. DCOs are not explicitely required to deposit cash with central banks or to collateralise 95% of the cash maintained with commercial banks. The CFTC requirement for the deposit of cash is considered much less restrictive than the corresponding requirement in EMIR. No restriction comparable to the one in the EU regime has been found with respect to the investment in derivatives. Although, the CFTC regime has the same objectives to that of EMIR insofar as it is aimed at reducing credit, market and liquidity risks, as well as the safeguarding of funds the highlighted differences lead to a conclusion that the two regimes are not equivalent in this respect. ***SEC*** *The SEC regime for CAs includes investment policy requirements. Based on a review of the legally binding requirements which are applicable, at a jurisdictional level, to CAs subject to regulation by the SEC, these requirements are not equivalent to*

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secure arrangements at a central bank or an authorised financial institution may be used (subject to the institution having low credit risk and, in the case of third-country institutions, robust accounting practices, internal controls and segregation provisions).[518] • ***Highly secured arrangements for maintaining cash.*** Cash may only be deposited by a CCP through the use of central banks' standing deposit facilities or through highly secure arrangements with authorised financial institutions (subject to the institution having low credit risk and, in the case of third-country institutions, robust accounting practices, internal controls and segregation provisions). Where secure arrangements with authorised financial institutions are used then the deposit must be in a currency in	commodity, currency, reference instrument, index, or benchmark except as provided for adjustable rate securities in CFTC Regulation 1.25(b)(ii)(iv), or otherwise constitute a derivative instrument; (v) investments must meet the asset-based and issuer-based concentration limits (which limits do not take into account securities posted by customers as margin) and counterparty concentration limits in CFTC Regulation 1.25(b)(3). In addition, the weighted average time to maturity of the portfolio may not exceed 24 months.[528] • ***Highly secured arrangements for the deposit of financial instruments.*** A DCO may only deposit Cleared Swaps Customer Collateral in a Permitted Depository qualifying pursuant to the requirements set forth in CFTC Regulation	prudently on an on-going basis.[536] • ***Concentration limits.*** No corresponding provisions.		*those of EMIR. However, the internal policies, procedures, rules, models and methodologies of individual CAs, which are out of the scope of this assessment, may contain legally binding provisions equivalent to those of EMIR.* In particular, the SEC regime has similar objectives to that under EMIR insofar as it is aimed at reducing credit, market and liquidity risks, as well as the safeguarding of funds, but EMIR is significantly more prescriptive. The SEC regime does not specifically prohibit a CA from investing its capital in its own securities; however, a CA may only invest customer funds in certain U.S. government and state obligations or other investments approved by the SEC. The SEC regime does not specifically require CAs to deposit financial instruments posted at the CA as margin or default fund contributions with operators of securities settlement systems that ensure the full protection of such financial instruments; however, it would be inconsistent with many requirements applicable to a CA if it were to deposit or invest such amounts with an institution or in a manner that presented legal or other risks to their security and availability.

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which the CCP clears transactions or is able to risk manage and at least 95% of the cash must be collateralised with highly liquid financial instruments meeting most of the requirements under Article 45[519]. Where a CCP deposits assets with a third party, it must ensure that the assets belonging to the Clearing Members are identifiable separately from the assets belonging to the CCP and from assets belonging to that third party by means of differently titled accounts on the books of the third party or any other equivalent measures that achieve the same level of protection. A CCP must have prompt access to the financial instruments when required.[520] • ***Concentration limits.*** A CCP must take into account its overall credit risk exposures to individual	22.4.[529] When deposited in a Permitted Depository, Cleared Swaps Customer Collateral must be deposited into one or more Cleared Swaps Customer Accounts.[530] • ***Highly secured arrangements for maintaining cash.*** Cash balances must be invested or placed in safekeeping in a manner that bears little or no principal risk. [531] • ***Concentration limits.*** No corresponding provisions.			When a CA deposits assets with a third party, the SEC regime does not specifically require the CA to ensure that assets belonging to clearing members are identifiable separately from the assets belonging to the CA and from assets belonging to a third party. A CA is not specifically required to take into account its overall credit risk exposures to individual obligors in making its investment decisions or to ensure that its overall risk exposure to any individual obligor remains within acceptable concentration limits, except as implied under its general obligations with respect to liquidity risk management. ***CFTC – SIDCOs and Opt-In DCOs.*** *Taken in conjunction with the corresponding CFTC provisions for DCOs, the CFTC regime for SIDCOs and Opt-In DCOs includes investment policy requirements. . Based on a review of the legally binding requirements which are applicable, at a jurisdictional level, to SIDCOs and Opt-In DCOs subject to regulation by the CFTC, these requirements are not equivalent to those of EMIR. However, the internal policies, procedures, rules, models and methodologies of individual SIDCOs and Opt-In DCOs, which are out of the scope of*

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obligors in making its investment decisions and must ensure that its overall risk exposure to any individual obligor remains within acceptable concentration limits.[521] A CCP must establish and implement policies and procedures to ensure that the financial instruments in which its resources are invested remain sufficiently diversified. To this effect, a CCP must determine concentration limits at the levels of individual financial instruments, types of financial instruments, individual issuers, types of issuers, and counterparties with which financial instruments and cash have been deposited on a highly secured basis, taking into account relevant factors such as geographic distribution, interdependencies and multiple relationships that a CCP may have with a CCP, level of credit risk and exposures to the issuer through products				*this assessment, may contain legally binding provisions equivalent to those of EMIR.*

Description of the provision in Title IV of EMIR	Description of the corresponding CFTC provisions for DCOs	Description of the corresponding SEC provisions	Description of corresponding CFTC provisions for SIDCOs and Opt-In DCOs[1]	Assessment of Equivalence
cleared by the CCP. In calculating the limits for exposure to an issuer or custodian, a CCP must aggregate and treat as a single risk its exposures to all instruments issued by, or explicitly guaranteed by the issuer and all financial resources deposited with the custodian. A CCP must review its concentration limit policies at least annually and whenever a material change occurs that affects the risk exposure of the CCP. A CCP must inform the Competent Authority and the Clearing Members of the applicable concentration limits. It must inform the Competent Authority immediately if it breaches such limits and must rectify the breach as soon as possible.[522]				
Default procedures A CCP must have detailed procedures in place to be followed where a Clearing Member does not comply with	***Default procedures*** A DCO must maintain a written default management plan that delineates the roles and responsibilities of its	***Default procedures*** A CA must establish, implement, maintain and enforce written policies and procedures reasonably	***Default procedures*** No corresponding provisions.	***Default procedures*** ***CFTC – DCOs.*** *The CFTC regime for DCOs includes default procedure requirements which are applicable, at a jurisdictional level, to DCOs subject to*

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the participation requirements of the CCP within the time limit and in accordance with the procedures established by the CCP. The CCP must set out in detail the procedures to be followed in the event the default of a Clearing Member is not declared by the CCP. Those procedures must be reviewed annually.[538] A CCP must take prompt action to contain losses and liquidity pressures arising from defaults, and must ensure that the closing out of any Clearing Member's positions does not disrupt its operations or expose non-defaulting Clearing Members to losses that they cannot anticipate or control.[539] Where a CCP considers that a Clearing Member will not be able to meet its future obligations, it must promptly inform the competent authority before the default procedure is declared or triggered. The competent authority must promptly communicate that information	board, its risk management committee, other relevant committees and DCO management in addressing the default, including necessary coordination with, or notification of, other entities and regulators.[545] A DCO must have rules and procedures designed to allow for the efficient, fair, and safe management of events during which members or clearing members become insolvent or otherwise default on the obligations of the members or clearing members to the DCO.[546] The rules must ensure that the DCO may take timely action to contain losses and liquidity pressures and to continue meeting each obligation of the DCO.[547] A DCO must limit the exposure of the DCO to potential losses from defaults by members and clearing members of the DCO to ensure that the operations of the DCO will not be disrupted and non-defaulting members or clearing members will not be exposed to losses that they	designed to make key aspects of the CA's default procedures publicly available.[553] A CA must establish, implement, maintain and enforce written policies and procedures reasonably designed to establish default procedures that ensure that the CA can take timely action to contain losses and liquidity pressures and to continue meeting its obligations in the event of a clearing member default and must limit its exposures to potential losses from defaults by its clearing members under normal market conditions so that the operations of the CA would not be disrupted and non-defaulting clearing members would not be exposed to losses that they cannot anticipate or control.[554] A CA must establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for a well-founded, transparent, and enforceable legal framework		*regulation by the CFTC, and which are broadly equivalent to those in EMIR, albeit that the EMIR contemplates two mechanisms for the transfer of client positions upon a clearing member default, whereas based on the type of segregation, whereas the CFTC regime only prescribes a single segregation and transfer mechanism.* ***SEC*** *The SEC regime for CAs includes default procedure requirements. Based on a review of the legally binding requirements which are applicable, at a jurisdictional level, to CAs subject to regulation by the SEC, these requirements are not equivalent to those of EMIR. However, the internal policies, procedures, rules, models and methodologies of individual CAs, which are out of the scope of this assessment, may contain legally binding provisions equivalent to those of EMIR.* A CA is not specifically required to set out in detail the procedures to be followed in the event the default of a clearing member is not declared by the CA. A CA is not expressly required to inform the SEC when it considers that a clearing member will not be able to meet its

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to ESMA, to the relevant members of the ESCB and to the authority responsible for the supervision of the defaulting Clearing Member.[540] A CCP must verify that its default procedures are enforceable, and take all reasonable steps to ensure that it has the legal power to liquidate the proprietary positions of the Defaulting Clearing Member and to transfer or liquidate the positions of the Clients of the Defaulting Clearing Member.[541] Where a CCP keeps records and accounts for a Clearing Member on an: • ***Omnibus client segregation*** basis, the CCP must contractually commit itself to trigger the procedures for the transfer of the assets and positions held by the Defaulting Clearing Member for its clients to another Clearing Member designated by all those Clients,	cannot anticipate or control.[548] A DCO must provide immediate notice to the CFTC upon the default of a clearing member. An event of default must be determined in accordance with the rules of the DCO. The notice of default must include: (i) the name of the clearing member; (ii) the products the clearing member defaulted upon; (iii) the number of positions the clearing member defaulted upon; and (iv) the amount of the financial obligation.[549] A DCO must operate pursuant to a well-founded, transparent, and enforceable legal framework that addresses that must provide, among other matters, for the steps that a DCO would take to address a default of a clearing member, including but not limited to, the unimpeded ability to liquidate collateral and close out or transfer positions in a timely manner.[550] A DCO must have rules providing that the DCO will promptly transfer all or a	for each aspect of its activities in all relevant jurisdictions.[555]		future obligations. While EMIR specifically requires a CCP to verify that its default procedures are enforceable, the SEC regime only requires a CA to ensure that its default procedures are enforceable pursuant to the general requirement that CAs operate under an enforceable legal framework. EMIR contains provisions which contemplate the transfer of client positions upon a clearing member default based on the type of segregation, whereas the SEC regime does not expressly address the transfer of client positions. ***CFTC – SIDCOs and Opt-In DCOs.*** *Taken in conjunction with the corresponding CFTC provisions for DCOs, the CFTC regime for SIDCOs and Opt-In DCOs includes default procedure requirements which are applicable, at a jurisdictional level, to SIDCOs and Opt-In DCOs subject to regulation by the CFTC, and which are broadly equivalent to those of EMIR.*

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on their request and without the need for the Defaulting Clearing Member's consent; that other Clearing Member may be obliged to accept those assets and positions only where it has contractually committed itself towards the Clients to do so. It for any reason such transfer does not take place within the timeframe specified in the CCP's operating rules, the CCP may take all steps permitted by its rules to actively manage its risks in relation to those positions, including liquidating the assets and positions held by the Defaulting Clearing Member for the relevant Clients.[542] • ***Individual client segregation*** basis, the CCP must contractually commit itself to trigger the procedures for the transfer of the assets and positions held by the Defaulting Clearing Member for the account of the rele-	portion of a customer's portfolio of positions and related funds at the same time from the carrying clearing member of the DCO to another clearing member of the DCO, without requiring the close-out and re-booking of the positions prior to the requested transfer, subject to the following conditions: (i) the customer has instructed the carrying clearing member to make the transfer; (ii) the customer is not currently in default to the carrying clearing member; (iii) the transferred positions will have appropriate margin at the receiving clearing member; (iv) any remaining positions will have appropriate margin at the carrying clearing member; and (v) the receiving clearing member has consented to the transfer.[551] A DCO receiving Cleared Swaps Customer Collateral from an FCM must treat the value of the collateral as belonging to such customer, and such amount must not be used to margin, guarantee, or			

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vant Client to another Clearing Member designated by the Client, on its request and without the need for the Defaulting Clearing Member's consent; that other Clearing Member may be obliged to accept those assets and positions only where it has contractually committed itself towards the Client to do so. It for any reason such transfer does not take place within the timeframe specified in the CCP's operating rules, the CCP may take all steps permitted by its rules to actively manage its risks in relation to those positions, including liquidating the assets and positions held by the Defaulting Clearing Member for the Client. [543] Clients' collateral distinguished by a CCP in accordance with EMIR's requirements for omnibus client segregation and individual client segregation must be used only to	secure the Cleared Swaps or other obligations of the FCM or of any other Cleared Swaps Customer or other customer.[552]			

Description of the provision in Title IV of EMIR	Description of the corresponding CFTC provisions for DCOs	Description of the corresponding SEC provisions	Description of corresponding CFTC provisions for SIDCOs and Opt-In DCOs[1]	Assessment of Equivalence
cover positions held for their account. Any balance owed by the CCP after the completion of a Defaulting Clearing Member's default management process must be returned to those Clients (if known to the CCP), or to the Clearing Member for the account of its Clients (if not).[544]				
Review of models, stress testing and back testing • ***Model validation and testing programmes.*** A CCP must regularly review the models and parameters it has adopted to calculate margin requirements, default fund contributions, collateral requirements and other risk control mechanisms. Such models must be subject to frequent stress tests to assess resilience in extreme but plausible market conditions and back tests to assess the reliability of the underlying methodology. Material re-	***Review of models, stress testing and back testing*** • ***Model validation and testing programmes.*** A DCO must regularly review the models and parameters adopted to calculate margin requirements, financial resource requirements, collateral requirements and other risk control mechanisms. A DCO must back test the adequacy of its initial margin requirements and stress test the adequacy of the financial resources of the DCO, clearing member, or large trader, as applicable. A DCO's systems	***Review of models, stress testing and back testing*** • ***Model validation and testing programmes.*** A CA must establish, implement, maintain and enforce written policies and procedures reasonably designed to review margin requirements and related risk-based models and parameters at least monthly,[578] with independent validation annually.[579] A CA must submit their risk management procedures, including margin methodology, to the SEC for review.[580] A CA must establish,	***Review of models, stress testing and back testing*** • ***Model validation and testing programmes.*** Under proposed CFTC Rules, a SIDCO or Opt-In DCO must establish procedures for reporting stress test results to its risk management committee or board of directors, as appropriate, and for using the results to assess the adequacy of, to help make sure they meet the minimum financial resources requirement and to adjust their total financial resources[587].	***Review of models, stress testing and back testing*** ***CFTC – DCOs.*** *The CFTC regime for DCOs includes review of models, stress testing and back testing requirements. Based on a review of the legally binding requirements which are applicable, at a jurisdictional level, to DCOs subject to regulation by the CFTC, these requirements are not equivalent to those of EMIR. However, the internal policies, procedures, rules, models and methodologies of individual DCOs, which are out of the scope of this assessment, may contain legally binding provisions equivalent to those of EMIR.* In particular, a DCO is not specifically

Description of the provision in Title IV of EMIR	Description of the corresponding CFTC provisions for DCOs	Description of the corresponding SEC provisions	Description of corresponding CFTC provisions for SIDCOs and Opt-In DCOs[1]	Assessment of Equivalence
visions or adjustments to the CCP's models and parameters, valuation models and validation policies should be subject to risk committee review, independent validation and validation from the CCP's Competent Authority and ESMA. The adopted models and parameters, including any significant change thereto, must be subject to an opinion of the college pursuant to Article 19 of EMIR. ESMA will ensure that information on the results of the stress tests is passed on to the ESAs to enable them to assess the exposure of financial undertakings to the default of CCPs. A CCP shall regularly assess the theoretical and empirical properties of its models. [556] • ***Back testing.*** A CCP must have in place a programme in relation to back testing of margin coverage on a daily basis based on an ex-post com-	for generating initial margin requirements, including its theoretical models, must be reviewed and validated by a qualified and independent party, on a regular basis. Such qualified and independent parties may be independent contractors or employees of the DCO but must not be persons responsible for the development or operation of the systems and models being tested.[566] • ***Back testing and Stress testing:*** A DCO must have in place procedures to: (i) back test the adequacy of its initial margin requirements at least monthly in the ordinary course and on a daily basis for products or portfolios experiencing significant market volatility, based on a comparison of the DCO's initial margin requirements with historical price changes to determine the extent of actual margin coverage;[567]	implement, maintain and enforce written policies and procedures reasonably designed to review margin requirements and related risk-based models and parameters at least monthly.[581] The SEC believes that CAs should monitor exposure and margin coverage on an intraday basis depending on the individual risk characteristics of their members and businesses, and adjust their risk management processes as needed.[582] A CA that performs CCP services must establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for an annual model validation consisting of evaluating the performance of the CA's margin models and the related parameters and assumptions associated with such	• ***Back testing.*** No corresponding provisions. • ***Sensitivity testing and analysis.*** Under proposed CFTC Rules, a SIDCO or Opt-In DCO must conduct a sensitivity analysis of their respective margin models, at least monthly. The sensitivity analysis must involve reviewing a wide range of parameters and assumptions that reflect possible market conditions, including actual and simulated positions, in order to understand how the level of margin coverage might be affected by highly stressed market conditions. The parameters and assumptions is expected to capture a variety of historical and hypothetical conditions, including the most volatile periods that have been experienced by the markets served by the SIDCO or Opt-In DCO and extreme changes in the	required to inform regulators of the results of the tests of its models and parameters or to submit material revisions or adjustments to the risk committee, competent authority or to independent review, or to submit the results of back testing to its risk committee or clearing members; however, a DCO is required to keep records of tests available for the CFTC's inspection. A CCP under EMIR must analyse its financial resources coverage by conducting stress tests at least daily, whereas a DCO must analyse its financial resources coverage by conducting stress tests at least monthly, although the DCO must also conduct weekly stress tests on clearing member accounts and daily stress tests on large traders. A DCO is not specifically required to perform coverage monitoring so as to promptly test and if applicable review its models and adjust margin requirements, haircuts and correlation for purposes of portfolio margining in case of changing market conditions. A DCO is not specifically required to perform reverse stress tests designed to identify under which market conditions the combination of its margin and other

Description of the provision in Title IV of EMIR	Description of the corresponding CFTC provisions for DCOs	Description of the corresponding SEC provisions	Description of corresponding CFTC provisions for SIDCOs and Opt-In DCOs[1]	Assessment of Equivalence
parison of observed outcomes with expected outcomes derived from margin models. Back testing results must be periodically reported to the risk committee and made available to clearing member and clients. [557] • ***Sensitivity testing and analysis.*** A CCP must have in place a programme in relation to sensitivity testing and analysis to assess the coverage of the margin model under various market conditions, including realized stressed market conditions and hypothetical unrealized stressed market conditions, and to determine the sensitivity of the system to errors in the calibration of such parameters and assumptions.[558] Sensitivity analysis must be performed on a number of actual and representative clearing member portfolios. Back testing results must be periodically reported to the risk commit-	(ii) perform stress testing that will allow it to make a reasonable calculation of the financial resources needed to meet its financial obligations to its clearing members under extreme but plausible market conditions;[568] and, (iii) evaluate the appropriateness of the haircuts it applies to reflect credit, market and liquidity risks to the assets that it accepts in satisfaction of initial margin obligations.[569] • ***Sensitivity testing and analysis, Maintaining sufficient coverage and Review of models using test results.*** A DCO must evaluate the appropriateness of haircuts to reflect credit, market and liquidity risks to the assets that it accepts in satisfaction of initial margin obligations at least quarterly and a DCO must evaluate the appropriateness of any concentration limits or charges on assets	models by a qualified person who is free from influence from the persons responsible for the development or operation of the models being validated.[583] • ***Back testing, Stress testing, Maintaining sufficient coverage and Review of models using test results.*** In the preamble to the final SEC Rules on Clearing Agency Standards, the SEC observes that the rules provide clearing agencies with the flexibility to establish risk management procedures (e.g., back testing, stress testing, model validation procedures and the composition of financial resources) that are appropriately tailored to current market conditions and can be revised over time to address changes in market conditions.[584] • ***Sensitivity testing and analysis.*** No corre-	correlations between price[588]. • ***Stress testing – total and liquid financial resources.*** Under proposed CFTC Rules, SIDCOs and Opt-In DCOs must perform stress testing, on a daily basis, of its financial resources and liquid resources using predetermined parameters and assumptions and perform comprehensive analyses of stress testing scenarios and underlying parameters to ascertain that they are appropriate for determining the required level of financial resources and liquid resources in current and evolving market conditions[589]. SIDCOs and Opt-In DCOs must evaluate [their] stress testing scenarios, models, and underlying parameters more frequently than once a month, where	financial resources may provide insufficient coverage of credit exposures and for which its liquid financial resources may be insufficient, including by modelling extreme market conditions beyond what is considered plausible. A DCO must test its collateral haircut policies at least quarterly, whereas a CCP under EMIR must test them at least monthly; however, a DCO must test the appropriateness of any concentration limits or charges on assets posted as initial margin at least monthly. A DCO is not specifically required to publicly disclose the general principles underlying its models and their methodologies, other than its margin-setting methodology, the nature of the tests performed, or a high level summary of the test results and any corrective actions undertaken. ***SEC*** *The SEC regime for CAs includes review of models, stress testing and back testing requirements. Based on a review of the legally binding requirements which are applicable, at a jurisdictional level, to CAs subject to regulation by the SEC, these requirements are not equivalent to those of EMIR. However, the internal policies, procedures, rules,*

Description of the provision in Title IV of EMIR	Description of the corresponding CFTC provisions for DCOs	Description of the corresponding SEC provisions	Description of corresponding CFTC provisions for SIDCOs and Opt-In DCOs[1]	Assessment of Equivalence
tee. • ***Stress testing – total and liquid financial resources.*** A CCP must have in place a programme to stress test its total financial resources and liquid financial resources to ensure that they are sufficient[559]. • ***Maintaining sufficient coverage.*** A CCP must have in place a programme to recognise changes in market conditions and, if necessary, to adapt its margin requirements, including the haircuts it imposes[560]. • ***Review of models using test results.*** A CCP must have in place a programme to review the coverage provided by its margin models and, if necessary, to recalibrate them[561]. • ***Reverse stress tests***. A CCP must have in place a reverse stress testing programme designed to iden-	posted as initial margin at least monthly.[570] A DCO must perform stress testing that will allow it to make a reasonable calculation of the financial resources needed to meet its financial obligations to its clearing members at least monthly.[571] A DCO must perform stress tests on each clearing member account, by house origin and by each customer origin, and each swap portfolio, including any portfolio containing futures and/or options and held in a commingled account, by beneficial owner, under extreme but plausible market conditions at least weekly. A DCO must perform tress tests on each large trader who poses significant risk to a clearing member or the DCO, including futures, options, and swaps cleared by the DCO, which are held by all clearing members carrying accounts for each such large trader at least dai-	sponding provisions. • ***Testing default procedures.*** No corresponding provisions. • ***Information to be publicly disclosed***. A CA must submit their risk management procedures, including margin methodology, to the SEC for review and public comment as a proposed rule change under Rule 19b–4. The Rule 19b–4 process provides for public disclosure, as well as an opportunity for interested parties to comment on the proposed rule change.[585] A CA must establish, implement, maintain and enforce written policies and procedures reasonably designed to make key aspects of the CA's default procedures publicly available.[586]	appropriate. • ***Maintaining sufficient coverage.*** No corresponding provisions. • ***Review of models using test results.*** No corresponding provisions. • ***Reverse stress tests***. No corresponding provisions. • ***Testing default procedures***. No corresponding provisions. • ***Frequency***. Under proposed CFTC Rules, SIDCOs and Opt-in DCOs must perform, on an annual basis, a full validation of their financial risk management model and their liquidty risk management model. SIDCOs and Opt-In DCOs must regularly conduct an assessment of the theoretical and empirical properties of their margin model for all products they clear.[590]	*models and methodologies of individual CAs, which are out of the scope of this assessment, may contain legally binding provisions equivalent to those of EMIR.* In particular, a CA must have its margin models independently validated each year but is not specifically required to submit the results of this validation to the SEC or to inform the SEC of the results of the tests of its models and parameters or to submit material revisions or adjustments to the risk committee, competent authority or to independent review, or to submit the results of back testing to its risk committee or clearing members, however a CA must submit its risk management procedures, including margin methodology, to the SEC for review. EMIR also prescribes numerous specific requirements regarding a CCP's stress testing, back testing and model review frameworks, whereas the SEC relies on fewer such requirements. The SEC regime does not specifically require the same level of validation of liquidity risk management frameworks, valuation models, correlation performance in relation to portfolio

Description of the provision in Title IV of EMIR	Description of the corresponding CFTC provisions for DCOs	Description of the corresponding SEC provisions	Description of corresponding CFTC provisions for SIDCOs and Opt-In DCOs[1]	Assessment of Equivalence
tify under which market conditions the combination of its margin, default fund and other financial resources may provide insufficient coverage of credit exposures and for which its liquid financial resources may be insufficient, including by modelling extreme market conditions beyond what is considered plausible. The results of the stress testing programme should periodically be reported to the risk committee.[562] • ***Testing default procedures***. A CCP must regularly test the key aspects of its default procedures, and take all reasonable steps to ensure that Clearing Members (and, where relevant, Clients, service providers and Interoperable CCPs) understand them and have appropriate procedures in place to respond to a default.[563] • ***Frequency***. A CCP must conduct a comprehensive	ly.[572] • ***Reverse stress tests.*** No corresponding provisions. • ***Testing default procedures***. A DCO must test its default management plan at least annually.[573] A DCO must conduct regular, periodic and objective testing and review of its business continuity and disaster recovery capabilities by qualified, independent professionals who are responsible for the operation and development of the systems being tested. Senior DCO management must review reports containing protocols for and results of such tests.[574] • ***Information to be publicly disclosed***. A DCO must disclose publicly the margin-setting methodology;[575] the size and composition of the financial resource package		***Information to be publicly disclosed***. No corresponding provisions.	margining, or testing results. The SEC regime does not require CAs to review models specifically for default fund contributions. The SEC regime does not specifically require reverse stress tests or sensitivity analysis. However, the SEC has said that its rules provide CAs with the flexibility to establish risk management procedures (e.g., back testing, stress testing, model validation procedures and the composition of financial resources) that are appropriately tailored to current market conditions and can be revised over time to address changes in market conditions.[591] The SEC regime does not specifically require CAs to regularly test key aspects of its default procedures. The SEC regime does require a CA to disclose its margin methodology, but a CA is not required to disclose the nature of tests performed or a high level summary of results and corrective actions taken. The SEC regime requires a CA to make key aspects of its default procedures publicly available; however, does not specify the particular aspects that must be disclosed.

Description of the provision in Title IV of EMIR	Description of the corresponding CFTC provisions for DCOs	Description of the corresponding SEC provisions	Description of corresponding CFTC provisions for SIDCOs and Opt-In DCOs[1]	Assessment of Equivalence
validation of its models and their methodologies, its liquidity risk management framework, valuation models, correlation performance in relation to portfolio margining and testing programmes at least annually. A CCP must analyse and monitor its model performance and financial resources coverage in the event of default and its liquidity risk management framework by back-testing margin coverage and conducting stress tests at least daily. A CCP must conduct a detailed thorough analysis of testing results at least monthly (and more frequently if market conditions are stressed or expected to be stressed) to ensure that stress testing scenarios, models, underlying parameters and assumptions are correct. A CCP must conduct sensitivity analysis at least monthly (and more frequently if markets are un-	available in the event of a clearing member default;[576] and the rules and procedures for defaults.[577]			***CFTC – SIDCOs and Opt-In DCOs.*** *Taken in conjunction with the corresponding CFTC provisions for DCOs, the CFTC regime for SIDCOs and Opt-In DCOs includes review of models, stress testing and back testing requirements. Based on a review of the legally binding requirements which are applicable, at a jurisdictional level, to SIDCOs and Opt-In DCOs subject to regulation by the CFTC, these requirements are not equivalent to those of EMIR. However, the internal policies, procedures, rules, models and methodologies of individual SIDCOs and Opt-In DCOs, which are out of the scope of this assessment, may contain legally binding provisions equivalent to those of EMIR.* A SIDCO is not specifically required to perform reverse stress tests designed to identify under which market conditions the combination of its margin and other financial resources may provide insufficient coverage of credit exposures and for which its liquid financial resources may be insufficient, including by modelling extreme market conditions beyond what is considered plausible. A SIDCO is not specifically required to publicly disclose the general principles underlying its models and their

Description of the provision in Title IV of EMIR	Description of the corresponding CFTC provisions for DCOs	Description of the corresponding SEC provisions	Description of corresponding CFTC provisions for SIDCOs and Opt-In DCOs[1]	Assessment of Equivalence
usually volatile or less liquid). A CCP must test collateral haircut policies at least monthly. A CCP must conduct reverse stress tests and review its default procedures at least quarterly with simulation exercises at least annually.[564] • ***Information to be publicly disclosed***. A CCP must publicly disclose the general principles underlying its models and their methodologies, the nature of the tests performed, and a high level summary of the test results and any corrective actions undertaken. A CCP must also make available key aspects of its default procedures, including: (i) the circumstances in which action may be taken and by whom, (ii) the scope of actions which may be taken; (iii) mechanisms to address a CCP's obligations to non-defaulting Clearing Members; and (iv) mechanisms to help address the				methodologies, other than its margin-setting methodology, the nature of the tests performed, or a high level summary of the test results and any corrective actions undertaken.

Description of the provision in Title IV of EMIR	Description of the corresponding CFTC provisions for DCOs	Description of the corresponding SEC provisions	Description of corresponding CFTC provisions for SIDCOs and Opt-In DCOs[1]	Assessment of Equivalence
Defaulting Clearing Member's obligations to its Clients.[565]				
Settlement • ***Cash settlement risk.*** A CCP must, where practical and available, use central bank money to settle its transactions. Where central bank money is not used, steps must be taken to limit cash settlement risk.[592] • ***Securities settlement risk***. A CCP must clearly state its obligations with regard to deliveries of financial instruments, including whether it has an obligation to make or receive delivery of such instruments. If so, it must (as far as possible) eliminate principal risk through the use of delivery-versus-payment mechanisms to the extent possible.[593] Settlement finality rules also apply in accordance with the Settlement Fi-	***Settlement*** A DCO must (i) employ money settlement arrangements to eliminate or strictly limit the exposure of the DCO to settlement bank risks (including credit and liquidity risks from the use of banks to effect money settlements); (ii) ensure that money settlements are final when effected; (ii) maintain an accurate record of the flow of funds associated with each money settlement; (iv) possess the ability to comply with each term and condition of any permitted netting or offset arrangement with any other clearing organisation; (v) regarding physical settlements, establish rules that clearly state each obligation of the DCO with respect to physical deliveries; and, (vi) ensure that each risk arising from an obligation described is identified and managed.[595] Except as otherwise provided	***Settlement*** A CA must establish, implement, maintain and enforce written policies and procedures reasonably designed to: • employ money settlement arrangements that eliminate or strictly limit its settlement bank risks, that is, its credit and liquidity risks from the use of banks to effect money settlements with its clearing members, and require funds transfers to the CA to be final when effected;[598] • state to its clearing members the CA's obligations with respect to physical deliveries and identify and manage the risks from these obligations[599] and eliminate principal risk by linking securities transfers to funds transfers in a way	***Settlement*** No corresponding provisions.	***Settlement*** ***CFTC – DCOs.*** *The CFTC regime for DCOs includes settlement requirements which are applicable, at a jurisdictional level, to DCOs subject to regulation by the CFTC, and which are broadly equivalent to those in EMIR.* A DCO is not specifically required to use central bank money where practical and available to settle its transactions; however, a DCO is required to employ money settlement arrangements to eliminate or strictly limit the exposure of the DCO to settlement bank risks (including credit and liquidity risks from the use of banks to effect money settlements). A DCO is required to clearly state its obligations with regard to deliveries of financial instruments, although it is not specifically required to eliminate principal risk through the use of delivery-versus-payment mechanisms (including not only to the extent possible) when it has an obligation to make or receive delivery of financial instruments. However, a DCO must establish rules that ensure that each risk

Description of the provision in Title IV of EMIR	Description of the corresponding CFTC provisions for DCOs	Description of the corresponding SEC provisions	Description of corresponding CFTC provisions for SIDCOs and Opt-In DCOs[1]	Assessment of Equivalence
nality Directive[594].	by CFTC order, a DCO must effect a settlement with each clearing member at least once each business day, and must have the authority and operational capacity to effect a settlement with each clearing member, on an intraday basis.[596] A DCO must ensure that settlements are final when effected by ensuring that it has entered into legal agreements that state that settlement fund transfers are irrevocable and unconditional no later than when the DCO's accounts are debited or credited.[597]	that achieves delivery versus payment;[600] and; • ensure that final settlement occurs no later than the end of the settlement day, and require that intraday or real-time finality be provided where necessary to reduce risks.[601] The SEC will determine for purposes of registration, whether a CCP is organised to facilitate prompt and accurate clearance and settlement and whether its rules are designed to promote prompt and accurate clearance and settlement.[602]		arising from an obligation described is identified and managed. On balance, these differences do not undermine the consistency of the objectives of the CFTC and EMIR regimes ***SEC*** *The SEC regime for CAs includes settlement requirements which are applicable, at a jurisdictional level, to CAs subject to regulation by the SEC, and which are broadly equivalent to those in EMIR.* A CA is not specifically required to use central bank money where practical and available to settle its transactions; however, a CA is required to employ money settlement arrangements to eliminate or strictly limit the exposure of the CA to settlement bank risks (including credit and liquidity risks from the use of banks to effect money settlements). A CA is required to clearly state its obligations with regard to deliveries of financial instruments and is required to eliminate principal risk through the use of delivery-versus-payment mechanisms to the extent possible when it has an

Description of the provision in Title IV of EMIR	Description of the corresponding CFTC provisions for DCOs	Description of the corresponding SEC provisions	Description of corresponding CFTC provisions for SIDCOs and Opt-In DCOs[1]	Assessment of Equivalence
				obligation to make or receive delivery of financial instruments. On balance, these differences do not undermine the consistency of the objectives of the SEC and EMIR regimes ***CFTC – SIDCOs and Opt-In DCOs.*** *Taken in conjunction with the corresponding CFTC provisions for DCOs, the CFTC regime for SIDCOs and Opt-In DCOs includes settlement requirements which are applicable, at a jurisdictional level, to SIDCOs and Opt-In DCOs subject to regulation by the CFTC, and which are broadly equivalent to those of EMIR.*

ANNEX IV - Legally binding requirements which are equivalent to those for Trade Repositories under EMIR

Description of provision in EMIR	Description of the corresponding CFTC provisions	Description of the corresponding SEC provisions	Assessment of Equivalence
A trade repository is a legal person that centrally collects and maintains records of derivatives. (EMIR Article 2(2))	An SDR is any person that collects and maintains information or records with respect to transactions or positions in, or the terms and conditions of, swaps entered into by third parties for the purpose of providing a centralized recordkeeping facility for swaps. (CEA §1a(48))	An SBSDR is any person that collects and maintains information or records with respect to transactions or positions in, or the terms and conditions of, SBS entered into by third parties for the purpose of providing a centralized recordkeeping facility for SBS (Exchange Act §3(a)(75)).	**Equivalent** The US SDR definition contains more specific requirements regarding the purpose of data collection. However, the definitions are broadly similar for the objectives they pursue and as a result (i.e. collect, keep and disseminate or provide authorised access). The US SBSDR definition contains more specific requirements regarding the purpose of data collection.
The senior management[603] and members of the board[604] of a trade repository must be of sufficiently good repute and experience so as to ensure the sound and prudent management of the trade repository (EMIR, Art. 78(6)).	Each SDR must ensure that members of its board of directors,[605] members of any committee that has authority to act on behalf of its board of directors or authority to amend or constrain actions of its board of directors, and its senior management, in each case, are of sufficiently good repute and possess the requisite skills and expertise to fulfil their responsibilities in the management and governance of the SDR, to have a clear understanding of such responsibilities, and to exercise sound judgment about the affairs of the SDR (17 C.F.R. 49.20(c)(5)).	Each SBSDR must establish, maintain, and enforce written policies and procedures reasonably designed to ensure that the SBSDR's senior management and each member of the board[606] or committee that has the authority to act on behalf of the board possess requisite skills and expertise to fulfil their responsibilities in the management and governance of the SBSDR, to have a clear understanding of their responsibilities, and to exercise sound judgment about the SBSDR's affairs.[607]	**Equivalent** CFTC Rules specifically address governance requirements with respect to board committees having certain board-like authority, while EU Rules do not. The Proposed SEC Rules specifically address governance requirements with respect to board committees having certain board-like authority, while EU Rules do not. The standards fulfil the same objectives and achieving similar results.

A trade repository must have robust governance arrangements, including a clear organizational structure with well defined, transparent and consistent lines of responsibility.[608]	Each SDR must establish governance arrangements that are transparent to fulfil public interest requirements, and to support the objectives of the Federal Government, owners, and participants (17 C.F.R. 49.20(a)(1)) and that are well-defined and include a clear organizational structure with consistent lines of responsibility (17 C.F.R. 49.20(a)(2)).	Each SBSDR must establish governance arrangements that are transparent to fulfil public interest requirements, and to support the objectives of the Federal Government, owners, and participants,[609] and that are well defined and include a clear organizational structure (Proposed SBSDR Rule, §240.13n-4(c)(2)(i).)	**Equivalent**
A trade repository must have adequate internal control mechanisms, including sound administrative and accounting procedures, which prevent any disclosure of confidential information EMIR, Art. 78(1).	Each SDR must establish effective internal controls, including with respect to administration, accounting, and the disclosure of confidential information.(17 C.F.R. 49.20(a)(2)).	Each SBSDR must establish governance arrangements with effective internal controls (Proposed SBSDR Rule, §240.13n-4(c)(2)(i)).	**Broadly equivalent** On Internal Controls, EU Rules require them specifically with regard to administration, accounting, and confidentiality, while the proposed SEC Rules contain only a general internal controls requirement. The proposed SEC rules, if confirmed, are expected to reach a similar outcome in terms of governance. Confidentiality is dealt elsewhere.
[610] A trade repository must maintain and operate effective written organizational and administrative arrangements to identify and manage any potential conflicts of interest concerning its managers, employees, or any person directly or indirectly linked to them by close links.[611]	Each SDR must establish and enforce rules to minimize conflicts of interest in the decision-making process of the SDR, and establish a process for resolving such conflicts of interest.[612] The chief compliance officer of the SDR, in consultation with the board of directors or a senior officer of the SDR, as applicable, must resolve any such conflicts of interest.[613]	Each SBSDR must establish and enforce written policies and procedures reasonably designed to minimize conflicts of interest in the decision-making process of the SBSDR and establish a process for resolving any such conflicts of interest, including conflicts between the commercial interests of the SBSDR and its statutory responsibilities.; conflicts in connection with the commercial interests of certain market participants or linked market infrastructures, third party service providers, and others; and conflicts between, among, or with persons associated with the SBSDR, market participants, affiliates of the SBSDR, and non-affiliated third parties.[614] The chief compliance officer of the SBSDR, in consultation with the board or chief	**Broadly Equivalent** EU Rules specifically require conflicts of interest policies regarding persons directly or indirectly linked to the trade repository by close links, while CFTC Rules do not. EU Rules specifically require conflicts of interest policies regarding persons directly or indirectly linked to the trade repository by close links, while proposed SEC Rules do not. The proposed SEC Rules would require conflicts of interest policies regarding commercial use of swap information, while EU Rules do not and instead prohibit any use of swap information for commercial purposes. The US rules seem however to pursue the same objective and the wide-ranging powers of the US regulators enable and suggest that also close links would be covered in the assessment of conflicts of interest.

		executive officer of the SBSDR, must resolve any conflicts of interest that may arise.[615]	
Trade repositories are required to indicate material shareholders (i.e. 5% or more) in new applications and to notify ESMA without undue delay of material changes to the constitution for registration.[616]	*Equity interest transfers.* Upon registration, SDRs are required to disclose any person who owns 10% or more of the SDR's equity or possesses voting power or control over the SDR (Form SDR, 17 C.F.R. 49, Appendix A.). Each SDR is subject to notification and certification requirements with regard to any equity interest transfer of 10% or more in the SDR (17 C.F.R. 49.5.).	Upon registration, SBSDRs are required to disclose any person who owns 10% or more of the SBSDR's stock or exercises control over the SBSDR.[617]	**Equivalent** CFTC Rules contain specific procedures for changes in ownership of SDRs, while EU Rules do not. The threshold for reporting ownership is 5% under EU Rules and 10% under CFTC Rules. The threshold for re-porting ownership is 5% under EU Rules and 10% under SEC Rules. This differ-ence does not hamper, in ESMA's view, the objec-tive of the provision. The thresholds considered herein are also consistent with those applicable under corporate law in the relevant jurisdictions and the difference would not impact greatly the performance of TR functions.
Compliance with EMIR. A trade repository must establish adequate policies and procedures sufficient to ensure its compliance, including of its managers and employees, with all the provisions of EMIR.[618]	*Compliance.* The chief compliance officer of an SDR must establish and administer written policies and procedure reasonably designed to prevent violation of the CEA and any CFTC Rules (17 C.F.R. 49.22(d)(3)).	*Compliance.* The chief compliance officer of an SDR is responsible for administering each policy and proce-dure[619] and ensuring compliance with the Exchange Act and any SEC Rules. Proposed SEC rules would fur-ther require the chief compliance officer to establish procedures for the remediation of noncompliance issues and establish and follow appropriate procedures for the handling, management response, remediation, retesting, and clos-ing of noncompliance issues. (Proposed SBSDR Rules, §240.13n-11(c)(6)-(7))[620]	**Equivalent** While both US (CFTC and proposed SEC) and EU Rules require policies and procedures designed to ensure compliance with applicable rules, US Rules specifically assign responsibility to a chief compliance officer. In ESMA's view the EU and US approach are Equivalent as they both pursue the same objective and attain the same result: require independent compliance-dedicated staff and the fact that in the US one officer is required and in the EU one or more are admitted seem compatible. Also, proposed SEC SBSDR rules go somewhat further than the EMIR requirements by requiring the chief compliance officer to establish procedures for remediation of non-compliance and management response. ((Proposed SBSDR

			Rules, §240.13n-11(c)(6)-(7))
Access to services. A trade repository must have objective, non-discriminatory and publicly disclosed requirements for access by undertakings subject to the Reporting Obligation.[621] A trade repository must allow reporting entities to access specific services separately.[622]	*Access to services.* An SDR must provide its services to market participants on a fair, open and equal basis. An SDR may not provide access to its services on a discriminatory basis but is required to provide its services to all market participants for swaps it accepts in an asset class.[623] An SDR may not tie or bundle the offering of mandated regulatory services with other ancillary services that an SDR may provide to market participants.[624]	*Access to services.* An SBSDR must establish, monitor and enforce clearly stated objective criteria that would permit fair, open and not unreasonably discriminatory access to services offered by the SBSDR and participation by market participants, market infrastructures, venues from which data can be submitted, and third party service provides that seek to connect to or link with the SBSDR.[625] An SBSDR must permit market participants to access specific services offered by the SBSDR separately.[626]	**Equivalent** The requirements on access to TRs' services are similar and are expected to reach an equivalent outcome.
Access to information. A trade repository must grant service providers non-discriminatory access to information maintained by the trade repository, on condition that the relevant counterparties have provided their consent. Criteria that restrict access may only be permitted to the extent that their objective is to control the risk to the data maintained by a trade repository.[627]	*Access to information.* Third-party access to the swap data maintained by an SDR is permissible if both the SDR and the third-party service provider have strict confidentiality procedures that protect data and information from improper disclosure and, prior to data access, the third-party service provider and the SDR execute a confidentiality agreement.[628] Access of swap data maintained by an SDR to market participants is generally prohibited, except that data and information related to a particular swap may be accessed by either counterparty to that swap.[629]	*Access to information.* An SBSDR must establish, monitor and enforce clearly stated objective criteria that would permit fair, open and not unreasonably discriminatory access to data maintained by the SBSDR and participation by market participants, market infrastructures, venues from which data can be submitted, and third party service provides that seek to connect to or link with the SBSDR.[630] An SBDR must establish, maintain and enforce written policies and procedures reasonably designed to protect the privacy of any and all SBS transaction information that the SBSDR receives,	**Broadly Equivalent** EU Rules require counterparty consent to provide data access to third-party service providers, while CFTC Rules do not require consent but instead require confidentiality procedures and an executed confidentiality agreement between the SDR and the third-party service provider. EU Rules require counterparty consent to provide data access to third-party service providers, while proposed SEC Rules would allow sharing of information with affiliates and non-affiliated third parties, subject to policies and procedures designed to protect the privacy of such information. Since the purpose and result is equivalent, the regimes are considered Broadly Equivalent on this matter, since confidentiality of data is the key

		including information that the SBSDR shares with affiliates and non-affiliated third parties.[631]	element to protect, and the EU requirement on authorisation by counterparties and the US requirements on confidentiality fulfil this objective.
Prices and fees for services under EMIR. Prices and fees, including discounts and rebates and their conditions, must be publicly disclosed, for each separate service provided, and must be cost-related.[632]	*Prices and fees for services*. Any fees or charges imposed by an SDR in connection with the reporting of swap data and any other supplemental or ancillary services must be equitable and established in a uniform and non-discriminatory manner and may not be used as an artificial barrier to access to the SDR. Preferential pricing arrangements, including volume discounts or reductions, may not be offered unless they apply to all market participants uniformly and are not otherwise established in a manner that would effectively limit the application of such discount or reduction to a select number of market participants.[633] All fees or charges are to be fully disclosed and transparent to market participants, including a schedule of fees and charges that is accessible by all market participants on its Web site.[634]	*Prices and fees for services*. An SBSDR must ensure that any dues, fees or other charges imposed by, and any discounts or rebates offered by, the SBSDR are fair and reasonable and not unreasonably discriminatory and are applied consistently across all similarly-situated users of such SBSDR's services.[635]	**Broadly Equivalent** EU Rules require that prices and fees be "cost-related," while CFTC Rules expressly prohibit selective preferential pricing. EU Rules require that prices and fees be "cost-related," while proposed SEC Rules require that prices and fees be fair and reasonable and prohibit unreasonably discriminatory pricing and must be applied consistently across all similarly-situated users. Because prices are both regulated, even if under different approaches (cost v non-preferential pricing), these are complementary and fulfil the same aim: price fairness and the regimes deemed Broadly Equivalent in this regard.

Provision of ancillary services. Trade repositories must maintain the ancillary services[636] they provide (if any) operationally separate from the trade repository's function of centrally collecting and maintaining records of derivatives.[637]	No relevant provision.	No relevant provision.	**Not Equivalent** EU Rules explicitly require that ancillary services be operationally separate from reporting and recordkeeping functions, while CFTC Rules and SEC proposed rules do not, even if they include more general provisions on conflicts of interest, product tying/unbundling, and the supervisory powers may include a refusal of registration if the supervisor is not content with a certain TR (ancillary services or other).
A trade repository must maintain and operate an adequate organizational structure to ensure continuity and orderly functioning of the trade repository in the performance of its services and activities. It must employ appropriate and proportionate systems, resources and procedures.[638] A trade repository must identify sources of operational risk and minimize them through the development of appropriate, reliable and secure systems, controls and procedures having adequate capacity to handle the information received.[639]	An SDR must, with respect to all swap data in its custody, establish and maintain a program of risk analysis and oversight to identify and minimize sources of operational risk with respect to its operations and automated systems,[640] which must address specified categories of risk analysis and oversight[641] and should follow generally accepted standards and best practices.[642]	An SBSDR must establish, maintain and enforce written policies and procedures reasonably designed to ensure that its systems provide adequate levels of capacity, resiliency and security,[643] and must submit an annual objective review containing a risk assessment.[644]	**Equivalent** The organizational requirements related to the relevant rules and procedures that TRs need to develop are similar and are expected to achieve the same objectives.
In case of incidents. A trade repository must establish, implement and maintain an adequate business continuity policy and disaster recovery plan aiming at ensuring the maintenance of its functions, the timely recovery of operations and the fulfilment of the trade repository's	*Business continuity.* Each SDR must establish and maintain emergency procedures, backup facilities, and a business continuity-disaster recovery plan that allow for the timely recovery and resumption and operations and the fulfilment of the duties and obligations of the SDR, generally during the next	*Business continuity.* Each SBSDR must establish adequate contingency and disaster recovery plans[648] and must promptly notify the SEC of material systems outages and any remedial measures that have been implemented or are contemplated.[649]	**Equivalent** Similar rules on business continuity have been finalized by the CFTC or have been proposed by the SEC. If the proposed rules by the SEC are confirmed, equivalence should be considered for this aspect.

obligations. Such a plan must at least provide for the establishment of backup facilities.[645]	business day following the disruption.[646] SDRs determined by the CFTC to be critical SDRs are subject to more stringent requirements, including same-day recovery. Backup resources must be periodically tested to verify that they are sufficient to ensure continued fulfilment of all duties of the SDR.[647]		
The trade repository must ensure orderly substitution including the transfer of data to other trade repositories and the redirection of reporting flows to other trade repositories.[650]	A registered SDR may withdraw its registration with at least sixty days written notice to the CFTC, which must include information regarding the custodial SDR that will have custody of data and records of the withdrawing SDR and a statement that the custodial SDR is authorized to make such data and records available.[651]	A registered SBSDR may withdraw from registration with at least sixty days written notice to the SEC, which must include a designation of a person associated with the SBSDR to serve as the custodian of the SBSDR's books and records.[652] If an SBSDR ceases doing business or ceases to be registered, it must continue to preserve, maintain and make accessible the transaction data and historical positions required to be collected, maintained and preserved for the remainder of the period required for such records.[653] Every SBSDR must make and keep current a plan to ensure that transaction data and positions that are recorded in the SBSDR continue to be maintained, which must include procedures for transferring the transaction data and positions to the SEC or its designee (including another registered SBSDR).[654]	**Broadly equivalent** EU Rules require certain steps for orderly substitution in case of withdrawal of the trade repository's registration, including redirection of reporting flows, while CFTC Rules include only a requirement for a custodial SDR for data and records. EU Rules require certain steps for orderly substitution in case of withdrawal of the trade repository, including redirection of reporting flows. The proposed SEC Rules would not expressly require redirection of reporting flows, though they do require the SBSDR to ensure that transaction data and positions recorded in the SBSDR continue to be maintained. EU Rules allow transfer of data only to another trade repository, whereas proposed SEC Rules would allow transfer of data to a custodian, who has to be a "person associated with the SBSDR." The outcome of a transfer of data under the EU, CFTC and proposed SEC regime is expected to be similar. Therefore the regimes can be considered broadly equivalent for this aspect.
Trade repositories are required to provide financial reports and business plans as part of their application, and demonstrate proper resources and expected business status in six months after registration is granted.	An SDR must maintain sufficient financial resources to perform its duties and core principles.[655] Financial resources are considered sufficient if their value is at least equal to the amount needed to cover the SDR's operating costs for a period of at least	Proposed Rule 13n-1 establishes procedures for SBSDR registration, including filing Form SDR. An SBSDR would be required to provide to the SEC as part of its registration application, and amend promptly, certain financial information (e.g. balance sheet, statement of income and expenses, sources of revenue) and	**Equivalent with CFTC regime.** **Broadly equivalent with proposed SEC regime, that includes a reporting requirement and enables SEC to take action.**

	one year.[656]	busi-ness information (e.g. business organization, operational capability, access to SBSDRs' services and data, operating policies and procedures); such information must be updated at least annually. (see Form SDR Exhibits K and L). The proposing SBSDR release states that the information requested in pro-posed Form SDR is necessary to enable the SEC to determine whether to grant or deny an application for registration. The chief compliance officer of an SBSDR must submit a financial report to the SEC annually. (Proposed SBSDR Rules, §240.13n-11(d)-(g).)	
Initial record of data. A trade repository must promptly record the information received pursuant to the Reporting Obligation.[657]	*Acceptance of data*. An SDR must establish, maintain and enforce policies and procedures for the reporting of swap data to the SDR and must accept and promptly record all swap data in its selected asset class.[658] Such policies and procedures must provide for (i) electronic connectivity between the SDR and reporting market participants, (ii) the receipt of swap creation data, swap continuation data, real-time public reporting data, and all other data and information required to be reported to the SDR,[659] and (iii) prevention of invalidation or modification of valid swaps through the confirmation or recording process, together with procedures and facilities for effectively resolving disputes.[660]	*Acceptance of data*. Every SBSDR must establish, maintain and enforce written policies and procedures reasonably designed for the reporting of transaction data to the SBSDR, accept all transaction data that is reported in accordance with such policies and procedures, [661] and promptly record the transaction data it receives.[662] Such policies and procedures must provide for the prevention of invalidation or modification of valid SBS through the procedures or operations of the SBSDR,[663] together with procedures and facilities for effectively resolving disputes.[664]	**Equivalent** CFTC Rules prescribe a more specific process for acceptance of swap data than EU Rules do, includ-ing prevention of invalidation of valid swaps through the confirmation or recording process. The proposed SEC Rules would prescribe a more specific process for acceptance of swap data than the EU Rules, including prevention of invalidation of valid swaps.

Position calculations. A TR must calculate the positions by class of derivatives and by reporting entity based on the details of the derivative contracts reported pursuant to the Reporting Obligation.[665]	*Position calculations.* An SDR must establish policies and procedures to calculate positions for position limits and any other purposes as required by the CFTC for all persons with swaps that have not expired maintained by the SDR.[666]	*Position calculations.* Each SBSDR must establish, maintain and enforce written policies and procedures reasonably designed to calculate positions for all persons with open SBS for which the SBSDR maintains records.[667]	**Equivalent** TheCFTC requires calculation of positions similarly to the EU rules in this respect. The SEC rules are expected to be equivalent, if approved as proposed.
Confidentiality. A trade repository must ensure the confidentiality, integrity and protection of the information received under the Reporting Obligation.[668]	*Confidentiality.* Each SDR must establish, maintain, and enforce written policies and procedures reasonably designed to protect the privacy and confidentiality of any and all information that the SDR receives or maintains[669] and establish and maintain safeguards, policies, and procedures reasonably designed to prevent the misappropriation or misuse, directly or indirectly, of such information.[670] Waiver of any privacy rights may not be a condition of reporting swap data.[671]	*Confidentiality.* An SBSDR must establish, maintain and enforce written policies and procedures reasonably designed to protect the privacy of any and all SBS transaction information that the SBSDR receives, including information that the SBSDR shares with affiliates and non-affiliated third parties,[672] and establish and maintain safeguards, policies and procedures reasonably designed to prevent the misappropriation or misuse, directly or indirectly, of confidential information, material non-public information, and/or intellectual property.[673]	**Equivalent** The final rules on confidentiality restrict the access to information and the privacy protection of the information by the CFTC in a similar manner as EU rules The Proposed SEC Rules would not preclude the sharing of information with affiliates and non-affiliated third parties subject to confidentiality rules. This aspect is not expected to have an impact on the overall assessment that should be considered equivalent if the proposed rules are confirmed.
A trade repository must employ timely and efficient record keeping procedures to document changes to recorded information.[674] A trade repository must allow the parties to a contract to access and correct the information on a contract in a timely manner.[675]	An SDR must establish policies and procedures to ensure the accuracy of swap data and must confirm the accuracy of all swap data through specified counterparty notification and acknowledgement procedures, including the opportunity for counterparties to correct submitted swap data.[676]	Each SBSDR must promptly record the transaction data it receives (Proposed SBSDR Rule, §240.13n-5(b)(1)(iv)),must confirm with both counterparties to the SBS the accuracy of the data that was submitted[677] and establish, maintain and enforce written policies and procedures reasonably designed to satisfy itself by reasonable means that the transaction data that have been submitted and it maintains are accurate, including clearly identifying the source for each trade side and the pairing method (if any) for each transaction in order to identify the level of quality of the transaction data.[678] Each SBSDR must establish procedures	**Equivalent** CFTC rules and SEC proposed rules contain specific procedures for confirming the accuracy of swap data, while EU Rules contain general standards for changing or correcting information.

		and provide facilities reasonably designed to effectively resolve disputes over the accuracy of the transaction data and positions. (Proposed SBSDR Rule, §240.13n-5(b)(6)) Every SBSDR must establish, maintain, and enforce written policies and procedures reasonably designed to calculate positions and to ensure that the positions it maintains are accurate. (Proposed SBSDR Rules, §240.13n-5(b)(2) & (3)) Proposed Rule 905 of Regulation SBSR also would require a counterparty to report errors in prior transaction reports to the SBSDR. (Proposed Reporting Rule, §242.905)	
A trade repository must maintain the records for at least 10 years following the termination of the contract.[679]	An SDR must maintain swap data, including all historical positions, throughout the existence of the swap and for five years following final termination of the swap, during which time the records must be readily accessible by the SDR and available to the CFTC via real-time electronic access,[680] and thereafter for at least ten additional years in archival storage from which they are retrievable by the SDR within three business days.[681]	Every SBSDR must maintain transaction data for not less than five years after the applicable SBS expires and historical positions for not less than five years, in a place and electronic format that is readily accessible to the SEC and other person with authority to access or view such information.[682]	**Broadly Equivalent** Although the number of years (10 for the EU and 15 total for the CFTC and 5 under the SEC proposal) are different, the purpose and result attained are equivalent and the 15 years of the CFTC regime are actually different from the SEC regime, not representing a US single approach to which the EU one could be compared, even if the SEC rules are still to be approved. Also, the 15 years under the CFTC rule include 5 years under ready access, the 10 years of the EU regime being therefore equalled by the 10 years of US archival storage.

A trade repository may not use the data it receives under EMIR for commercial purposes unless the relevant counterparties have provided their consent.[683] A trade repository must take all reasonable steps to prevent any misuse of the information maintained in its systems.[684] A natural person who has a close link[685] with a trade repository or a legal person that has a parent undertaking[686] or a subsidiary relationship[687] with a trade repository may not use confidential information recorded in a trade repository for commercial purposes.[688]	Swap data accepted and maintained by an SDR generally may not be used for commercial or business purposes by the SDR or any of its affiliated entities,[689] except by written consent of the entity that submits such data.[690] Such consent may not be a condition of reporting swap data to the SDR and the SDR may not make commercial use of real-time swap data prior to public dissemination.[691] Each SDR must adopt and implement adequate "firewalls" or controls to protect reported swap data from any improper commercial use.[692]	Each SBSDR must establish, maintain and enforce reasonable written policies and procedures regarding the SBSDR's non-commercial and/or commercial use of the SBS transaction information that it receives.[693] Each SBSDR must establish and maintain safeguards, policies, and procedures that are reasonably designed to prevent the misappropriation or misuse of confidential information, material non-public information, and/or intellectual property, and that address standards pertaining to the trading of persons associated with the SBSDR for their personal benefit or for the benefit of others.	**Broadly Equivalent** Both EU and CFTC Rules prohibit commercial use of swap data without consent. EU Rules require consent of both counterparties, while CFTC Rules require only consent of the submitting party. EU Rules prohibit commercial use without consent by any natural person with a close link to the trade repository, while CFTC Rules prohibit commercial use without consent by the SDR or any of its affiliated entities. EU Rules prohibit commercial use of swap data without consent, while the proposed SEC Rules would allow commercial use subject to reasonable policies and procedures, including conflict of interest policies. These are not considered sufficient to protect counterparties as they have, under EU law, a specified right to refuse disclosure of their data, unless the policies and procedures of US TRs include, in the 'reasonable policies and procedures', the right for counterparties to oppose the commercial use of their data, before that commercial use takes place.
Counterparties and CCPs shall ensure that the details of any derivative contract they have concluded and of any modification or termination of the contract are reported to a trade repository. The details shall be reported no later than the working day following the conclusion, modification or termination of the contract. (EMIR Article 9)	A reporting party shall report any publicly reportable swap transaction to a registered swap data repository as soon as technologically practicable after such publicly reportable swap transaction is executed. Real-time public reporting ("as soon as technologically practicable") (DFA Sec 727; CFTC 43.3)	Certain key terms about the trade must be reported to an SDR "as soon as technologically practicable, but in no event later than 15 minutes after the time of execution", and the SDR must immediately publish a report of such transaction; other non-public information about the transaction must be reported later (but in no event later than 24 hours after execution of the transaction). *(Proposed Rule 901 and 902)*	**Broadly Equivalent** The Deadline to Report to TRs is not entirely fixed. This is because the US rules refer "as soon as technologically practicable", even if the SEC proposal includes adds a time limit of 15 minutes after execution with a cap of 24 hours depending on the nature of the information (public-non public). On the case of CFTC rules, "as soon as technologically practicable" may or not be before/after the EU rule deadline of one day. This is less clear than the single 1 day period after execution for the EU. The rules are considered broadly equivalent, provided that the interpretation and enforcement of "as soon as technologically practicable" does not go beyond the T+1 approach adopted in the EU in the CFTC case and not only

			the proposed SEC case.
Both counterparties (as well CCPs) are responsible for the reporting obligation. However, a counterparty or a CCP which is subject to the reporting obligation may delegate the reporting of the details of the derivative contract. (EMIR Article 9)	Only one counterparty reporting (on behalf of both). (CFTC 46.5)	Only one counterparty is required to report the transaction; reporting function may be delegated, but legal duty remains with reporting party. (Proposed Rule 901, Release No. 34-63346)	**Broadly Equivalent** The personal scope of the provisions in the US is pretty broad, therefore it is not expected to have a major impact on the data reported whether by default one counterparty reports or whether all the counterparties, including the CCP, are responsible for the report to be made.
• Details of the derivative contract. • Table of fields include specific EU fields: - confirmation timestamp - delivery of commodity derivatives underlyings - change log of TR - clearing threshold and hedging status - trade with non-EEA C/P, - intragroup flag (EMIR Article 9, RTS/ITS Article 9) (EMIR Article 9, TR RTS)	• Details of the derivative contract. • Fields not included in US regulations, even if these include general possibilities for ad-hoc requests ("any other term(s) of the swap matched or affirmed by the counterparties in verifying the swap" fields, which are intended to capture terms that are matched or affirmed, but not enumerated in the PET data tables (CFTC rules, Part 45 PET). (CFTC 43.6 and Table A1)	Certain data elements required (e.g., timestamp) but in other cases only general categories of information are set forth in rule (e.g., information that identifies the instrument); policies and procedures of SDRs must enumerate specific data elements and reporting protocols (Proposed Rule 901)	**Not equivalent** EU requirements are more specific (table of fields to be reported as a minimum under the technical standards on Article 9 EMIR). The CFTC and proposed SEC rules do specifically foresee a number of fields that contain essential information to monitor EMIR provisions on risk mitigation techniques.
Reports include information on exposures (information on mark-to-market or mark-to-model valuation of contracts and collateral) (RTS/ITS Article 9) *Reporting of exposures*:[694] The data	Reports include only "indication of collateralization" (CFTC Appendix 1 to Part 45—Tables of Minimum Primary Economic Terms Data under field)	Must report only "title of any master agreement, or any other agreement governing the transaction" (e.g., regarding margin), but not specifics of any such agreement. *(Proposed Rule 901(d)(1)(iv); Release*	**Not equivalent** The details required under the EU regime are much more stringent and contain essential information to valuate the exposures. CFTC Rules require only very limited reporting of

on collateral required as part of the Counterparty Data must include all posted collateral. Where a counterparty does not collaterise on a transaction level basis, counterparties must report to a trade repository collateral posted on a portfolio basis. When the collateral related to a contract is reported on a portfolio basis, the reporting counterparty must report to the trade repository a code identifying the portfolio of collateral posted to the other counterparty related to the reported contract. Non-financial counterparties other than Non-Financial Counterparties Subject to Clearing Obligation are not required to report collateral, mark-to-market, or mark-to-model valuations of the contracts. For contracts cleared by a CCP, mark-to-market valuations must only be provided by the CCP.		*No. 34-63346)*	collateral and exposures (uncollateralized, partially collateralized, one-way collateralized, or fully collateralized), whilst the proposed SEC rules do not require any collateral or exposures information. The absence of this information will severely limit the possibility of EU authorities to analyse the information maintained by trade repositories and accurately measure systemic risk, the key objective underpinning EMIR and the reporting obligation to TRs.
International codes used for reporting purposes: (temporary BIC) - LEI, UPI, trade ID generated by the counterparties (RTS/ITS Art 9)	International codes used for reporting purposes: (temporary CICI)- LEI, UPI, US trade ID (CFTC 45.6 and annexes)	Use of LEI, if available, would be required; if not available, SDR would be required to assign ID codes "using its own methodology." *(Proposed Rule 900)*	**Broadly Equivalent** Similar codes are expected to be used by EU and US trade repositories, also to ensure compliance with the general reconciliation and data aggregation obligations.
The reports must include the following information: *Counterparty data.*[695] The reports must include information relating to the counterparties to the derivative contract, including, where different,	Swap data required to be reported to an SDR includes two categories of data: swap creation data and swap continuation data. *Creation data.* Swap creation data means all primary economic terms data	Information required to be reported to an SBSDR includes two categories of data: information about the swap and life cycle events. *Information.* Transaction reports must include 21 categories of information	**Not Equivalent** Counterparty data EU Rules require reporting the beneficiary of the rights and obligations arising from a derivative contract, if different from the counterparty, while

the beneficiary of the rights and obligations arising from it. Such information must include the details set out in a table in an annex to the Reporting Obligation RTS (the "Counterparty Data").[696] *Cleared trades*:[697] Where a contract is concluded in a trading venue and cleared by a CCP such that a counterparty is not aware of the identity of the other counterparty, the reporting counterparty must identify that CCP as its counterparty.	("PET Data") and all confirmation data for a swap.[698] PET Data means all of the data elements necessary to fully report all of the terms of a swap matched or affirmed by the counterparties in verifying the swap, including at a minimum each of the terms included in the current list of primary economic terms released by the CFTC.[699] Confirmation data means all of the terms of a swap matched and agreed upon by the counterparties in confirming[700] the swap, including, for cleared swaps, internal identifiers assigned by the automated systems of the DCO to the two transactions resulting from novation to the DCO.[701]	about the SBS, including information relating to the counterparties, the asset class of the SBS,[702] underliers, pricing terms and amounts, clearing information, execution venue information, market value, and any customized features of the SBS.[703] *Life cycle events*. For any life cycle event (including clearing),[704] and any adjustment due to a life cycle event, that results in a change to information previously reported, the reporting party must promptly provide updated information reflecting such change to the SBSDR, except in cases of assignment or novation in which the reporting party ceases to be a counterparty, in which case the new counterparty shall be the new reporting party.[705]	CFTC Rules and SEC rules do not. Cleared trades EU Rules require reporting the CCP as counterparty for cleared trades where the identity of the counterparty is unknown, while the CFTC and the proposed SEC Rules do not specifically address this scenario.
706 The reports must include information relating to the main characteristics of the derivative contract concluded between the two counterparties, including their type, underlying maturity, notional value, price, and settlement date. Such information must include the details set out in a table in an annex to the Reporting Obligation RTS (the "Common Data").[707] Where a derivative contract includes features typical of more than one underlying asset as specified in this table, the report must indicate the class that the counterparties agree the contract most closely resembles	For each swap that does not have one easily identifiable primary underlying notional item, but instead involves multiple underlying notional items within the CFTC's jurisdiction that belong to different asset classes, swap data must be reported to a single SDR that accepts swaps in the asset class treated as the primary asset class involved in the swap by the reporting party making the first report of creation data. Primary economic terms for each asset class involved in the swap must be reported.[709]	Transaction reports must include 21 categories of information about the SBS, including information relating to the counterparties, the asset class of the SBS,[710] underliers, pricing terms and amounts, clearing information, execution venue information, market value, and any customized features of the SBS.[711]	**Broadly Equivalent** For multi-asset swaps, EU Rules require the counterparties to agree on the asset class the contract most closely resembles before reporting, while CFTC rules and proposed SEC rules require the reporting party to identify the primary asset class and report primary economic terms for each asset class involved in the swap.

before the report is sent to a trade repository.[708]			
Where an existing contract is subsequently cleared by a CCP, clearing should be reported as a modification of the existing contract.[712] Modifications to the data registered in trade repositories must be kept in a log identifying the person or persons that requested the modification, including the trade repository itself if applicable, the reason or reasons for such modification, a date and timestamp and a clear description of the changes, including the old and new contents of the relevant data.	Swap continuation data means all of the data elements that must be reported during the existence of a swap to ensure that all data concerning the swap in the SDR remains current and accurate, including all changes to the primary economic terms of the swap occurring during the existence of the swap, and must include both life cycle/state data and valuation data.[713] Reporting parties may elect to report either life cycle event data or state data.[714] Life cycle event data means all of the data elements necessary to fully report any event that would result in either a change to a primary economic term of a swap or to any PET Data previously reported to an SDR in connection with a swap.[715] State data means all of the data elements necessary to provide a snapshot view, on a daily basis, of all the primary economic terms of a swap, including any change to any primary economic term or to any previously-reported PET Data since the last snapshot, including at a minimum each of the terms included in the current list of primary economic terms released by the CFTC.[716] Valuation data means all of the data elements necessary to fully describe the daily mark of the transaction.[717]	For any life cycle event (including clearing), and any adjustment due to a life cycle event, that results in a change to information previously reported, the reporting party must promptly provide updated information reflecting such change to the SBSDR, except in cases of assignment or novation in which the reporting party ceases to be a counterparty, in which case the new counterparty shall be the new reporting party.[718]	**Not Equivalent** EU Rules require a log of modifications to data registered in a trade repository, including identification of the person or persons that requested the modification. CFTC and the proposed SEC Rules do not explicitly contain this requirement.

The information in the reports must be provided in the format specified in a table in an annex to the Reporting Obligation ITS.[719]	In reporting swap data to an SDR, each reporting entity must use the facilities, methods, or data standards provided or required by the SDR to which the entity reports the data[720] and the SDR must maintain all swap data reported to it and transmit all swap data requested by the CFTC in a format acceptable to the CFTC.[721]	The reporting party must electronically transmit the information in a format required by the SBSDR, and in accordance with any applicable policies and procedures of the SBSDR.[722] A reporting party may provide information using codes in place of certain data elements, provided that the information necessary to interpret such codes is widely available on a non-fee basis.[723]	**Broadly Equivalent** EU Rules require reporting of data in the format specified in regulations, while CFTC Rules require reporting according to the data standards required by the applicable SDR. A similar scenario results from the proposed SEC provisions. However, CFTC Rules do require reporting of specific PET data fields and data subsequently transmitted from the SDR to the CFTC must be in a format acceptable to the CFTC. EU Rules require reporting of information according to a preset format with specified data fields, while the proposed SEC Rules would allow the SBSDR to determine format.
(i) A report must identify a derivative contract using a unique product identifier (a "UPI") which is: unique; neutral; reliable; open source; scalable; accessible; available at a reasonable cost basis; and subject to an appropriate governance framework. (ii) Where a UPI does not exist, a report must identify a derivative contract by using the combination of the assigned ISO 6166 ISIN code or Alternative Instrument Identifier code with the corresponding ISO 10962 CFI code. (iii) Where the combination referred to in (ii) is not available, the type of derivative must be identified on the following basis: (a) The class of the derivative must be identified as one of the following: commodities;	(i) Each swap subject to the jurisdiction of the CFTC must be identified in all recordkeeping and all swap data reporting by means of a UPI and product classification system ("PCS").[724] The UPI and PCS must identify and describe the swap asset class and the sub-type within that asset class to which the swap belongs, and the underlying product for the swap, with sufficient distinctiveness and specificity to enable the CFTC and other financial regulators to fulfil their regulatory responsibilities and to assist in real time presorting of swaps.[725] (ii) Before a UPI and PCS has been designated by the CFTC, each reporting entity must use the internal product identifier or product description used by the SDR to which the swap is reported in all recordkeeping and swap data	(i) Information reports must include information that identifies the asset class and underlier of a SBS,[727] identified by a UIC, which shall be assigned to a product by or on behalf of an internationally recognized standards-setting body that imposes fees and usage restrictions that are fair and reasonable and not unreasonably discriminatory.[728] (ii) If no standards-setting body meets these criteria, or if no standards-setting body has assigned a UIC to a product, an SBSDR may assign a UIC using its own methodology.[729]	**Broadly Equivalent** EU Rules are more specific than CFTC rules or SEC proposed rules regarding the classification of swaps into types and sub-types for reporting purposes. It is to be noted however that industry standards have been the main element in this regard and that those are the same globally, the EU standards on product identification being a fall-back solution, should there not be a global industry solution ready for the reporting start date.

credit; foreign exchange; equity; interest rate; or other. (b) The derivative type must be identified as one of the following: contracts for difference; forward rate agreements; forwards; futures; options; swaps; or other. (c) For derivatives not falling into a specific derivative class or derivative type (as set out in (a) and (b)), the report must be made on the basis of the derivative class or derivative type that the counterparties agree the derivative contract most closely resembles.	reporting.[726]		
The counterparties to a trade must generate a unique trade identifier for each derivative contract to enable trade repositories to aggregate and compare data across different trade repositories.	Each swap subject to the jurisdiction of the CFTC must be identified in all recordkeeping and all swap data reporting by use of a unique swap identifier (a "USI").[730] For swaps executed on a SEF or DCM, the SEF or DCM must create and transmit the USI.[731] For off-facility swaps with an SD or MSP counterparty, the reporting SD or MSP counterparty must create and transmit the USI.[732] For off-facility swaps with a non-SD/MSP reporting counterparty, the SDR to which PET Data is reported must create and transmit the USI.[733]	An SBSDR must assign a transaction ID to each SBS reported by a reporting party, using its own methodology	**Broadly Equivalent** EU Rules require counterparties to generate a unique trade identifier, while CFTC Rules require the SEF or DCM, reporting SD or MSP counterparty, or the SDR to create a USI, depending on the parties involved. The SEC proposed rules require the SBSDR to assign the transaction ID, not the counterparties. This is however a pending matter, as a global solution will be needed for trade identification enabling worldwide reconciliation of TR-held data and the equivalence assessment takes that uncertainty into account at this stage.
Reporting start date - ESMA has set out various reporting start date in the Reporting Obligation ITS:	(i) Credit and interest rate swaps[736] (a) SEFs, DCMs, DCOs and SDRs must comply with reporting obligations with respect to credit and interest rate swaps		**Equivalent with CFTC regime** US reporting requirements become effective earlier than those in the EU (the latter on a rolling basis starting from September, 2013, as currently

(i) For credit derivative and interest rate derivative contracts: (a) If a trade repository for that class of derivatives has been registered[734] before April 1, 2013, the Reporting Obligation will apply from July 1, 2013. (b) If there is no trade repository registered for that class of derivatives on or before April 1, 2013, the Reporting Obligation will apply 90 days after the registration of a trade repository for that class of derivatives. (c) If there is no trade repository registered for that class of derivatives by July 1, 2015, the Reporting Obligation will apply from that date and contracts must be reported to ESMA.[735]	beginning on October 12, 2012. (b) SDs and MSPs must comply with reporting obligations with respect to credit and interest rate swaps beginning on December 31, 2012. (c) Non-SD/MSP counterparties must comply with reporting obligations with respect to credit and interest rate swaps beginning on April 10, 2013.		foreseen). The proposed SEC reporting rules are not yet in effect and no timetable is currently available.
(ii) For all other derivative contracts: (a) If a trade repository for that class of derivatives has been registered before October 1, 2013, the Reporting Obligation will apply from January 1, 2014. (b) If there is no trade repository registered for that class of derivatives on October 1, 2013, the Reporting Obligation will apply 90 days after the registration of a trade repository	(ii) <u>Equity, foreign exchange and other commodity swaps</u>[738] (a) SEFs, DCMs, DCOs and SDRs must comply with reporting obligations with respect to equity, foreign exchange and other commodity swaps beginning on January 10, 2013. (b) SDs and MSPs must comply with reporting obligations with respect to equity, foreign exchange and other commodity swaps beginning on		**Equivalent with CFTC regime** US reporting requirements become effective earlier than those in the EU The proposed SEC reporting rules are not yet in effect and no timetable is currently available.

for that class of derivatives. (c) If there is no trade repository registered for that class of derivatives by July 1, 2015, the Reporting Obligation will apply from that date and contracts must be reported to ESMA.[737]	February 28, 2013. (c) Non-SD/MSP counterparties must comply with reporting obligations with respect to equity, foreign exchange and other commodity swaps beginning on April 10, 2013.		
The Reporting Obligation applies to derivative contracts entered into before August 16, 2012 which remain outstanding on that date, and to derivative contracts entered into on or after August 16, 2012.[739] (i) Derivative contracts which were outstanding on August 16, 2012 and are still outstanding on the reporting start date must be reported to a trade repository within 90 days of the reporting start date. (ii) Derivative contracts which were entered into before, on or after August 16, 2012, that are not outstanding on or after the reporting start date must be reported to a trade repository within 3 years of the reporting start date. The reporting start date must be extended by 180 days for the reporting of exposures.[740]	(iii) Historical Swaps[741] (a) SDs and MSPs must comply with reporting obligations with respect to historical credit and interest rate swaps on January 30, 2013. (b) SDs and MSPs must comply with respect to historical equity, foreign exchange and other commodity swaps on March 30, 2013. (c) Non-SD/MSP counterparties must comply with reporting obligations with respect to all swaps on April 10, 2013.	For SBS executed before, and whose terms had not expired as of, the July 21, 2010 enactment of the Dodd-Frank Act ("pre-enactment security-based swaps"), proposed Rule 901(i) would require counterparties to report such SBS to a registered SDR upon the effectiveness of Regulation SBSR. Similarly, counterparties also would be required to report security-based swaps executed after July 21, 2010 and before the effectiveness of Regulation SBSR ("transitional security-based swaps") upon the effectiveness of Regulation SBSR.	**Equivalent with CFTC regime** SDR subject to the CFTC regime are expected to collect at least as much historical data as under the EU regime. The proposed SEC reporting rules are not yet in effect and no timetable is currently available.
Counterparties must keep a record of any derivative contract they have concluded and any modification thereof for at least five years following the termination of the contract.[742]	Each SEF, DCM, DCO, SD and MSP must keep full, complete, and systematic records, together with all pertinent data and memoranda, of all activities relating to the business of such entity with respect to swaps.[743] Each non-SD/MSP	While the CEA and the Exchange Act contain similar statutory provisions, the SEC has not yet proposed its rules on recordkeeping requirements for counterparties to SBS.[748]	**Broadly Equivalent** CFTC Rules require SEFs, DCMs, and DCOs to keep records of swap transactions, while EU recordkeeping rules only apply to a broader range of counterparties.

	counterparty must keep full, complete, and systematic records, together with all pertinent data and memoranda, with respect to each swap in which they are a counterparty.[744] Timing: All records must be retained with respect each swap throughout the life of the swap and for a period of at least five years following the final termination of the swap.[745] Retrievability: Each record kept by a SEF, DCM, DCO, SD or MSP must be readily accessible via real time electronic access throughout the life of the swap and for two years following the final termination of the swap and retrievable within three business days through the reminder of the period during which it is required to be kept.[746] Each record kept by a non-SD/MSP counterparty must be retrievable within five business days throughout the period during which it is required to be kept.[747]		CFTC Rules prescribe specific standards for record retrievability that are not included in EU Rules. SEC has not yet proposed rules specifying the retention period for records of SBS. Even if the duration is not the same, broad convergence is attained as both jurisdictions include similar record keeping periods.
When one report is made on behalf of both counterparties:[749] (a) it must contain the Counterparty Data in relation to each of the counterparties; (b) the Common Data must be submitted only once; and (c) it must state that the report is being made on behalf of both counterparties.	[750] The allocation of reporting responsibility is as follows: In cases where the counterparties are responsible for reporting, if both counterparties to a swap are non-SD/MSP counterparties and only one counterparty is a U.S. person, that counterparty shall be the reporting counterparty.[751] <u>PET Data</u> ▪ *On-facility cleared swaps*: SEF/DCM	The allocation of reporting responsibility is as follows: • The reporting side for a SBS shall be as follows: • (1) If both sides of the SBS include a SBSD, the sides shall select the reporting side. • (2) If only one side of the SBS includes a SBSD, that side shall be the reporting side. • (3) If both sides of the SBS include a MSBSP, the sides shall	**Broadly Equivalent** EU Rules require reporting by both counterparties, subject to the ability of parties to make one report on behalf of both counterparties and the obligation to avoid duplication, while CFTC Rules and the proposed SEC rules assign the obligation to a single reporting party for each swap. It is to be noted, however, that reports are still sent and data expected to be reconciled amongst counterparties and TRs in both jurisdictions.

	▪ *On-facility uncleared swaps*: SEF/DCM ▪ *Off-facility cleared swaps*: If cleared before SD/MSP reporting deadline, DCO; otherwise, SD; if no counterparty is SD, then MSP; if no counterparty is SD or MSP, then financial entity[752] end user; if no party is financial entity, parties designate reporting party ▪ *Off-facility uncleared swaps*: SD; if no counterparty is SD, then MSP; if no counterparty is SD or MSP, then financial entity end user; if no party is financial entity, parties designate reporting party <u>Confirmation Data</u> ▪ *On-facility cleared swaps*: SEF/DCM and DCO ▪ *On-facility uncleared swaps*: SEF/DCM ▪ *Off-facility cleared swaps*: DCO ▪ *Off-facility uncleared swaps*: SD; if no counterparty is SD, then MSP; if no counterparty is SD or MSP, then financial entity end user; if no party is financial entity, parties designate reporting party	select the reporting side. • (4) If one side of the SBS includes a MSBSP and the other side includes neither a SBSD nor a MSBSP, the side including the MSBSP shall be the reporting side. • (5) If neither side of the SBS includes a SBSD or MSBSP: • (i) If both sides include a U.S. person or neither side includes a U.S. person, the sides shall select the reporting side. (ii) If only one side includes a U.S. person, that side shall be the reporting side.[753]	

	Life cycle event data or state data ▪ *On-facility cleared swaps*: DCO ▪ *On-facility uncleared swaps*: SD; if no counterparty is SD, then MSP; if no counterparty is SD or MSP, then financial entity end user; if no party is financial entity, parties designate reporting party ▪ *Off-facility cleared swaps*: DCO ▪ *Off-facility uncleared swaps*: SD; if no counterparty is SD, then MSP; if no counterparty is SD or MSP, then financial entity end user; if no party is financial entity, parties designate reporting party		
Delegation to third-parties. A counterparty or a CCP which is subject to the Reporting Obligation may delegate the performance of such obligation to a third party.[754]	*Contracting with third parties*. Reporting entities required to report swap creation data or swap continuation data, while remaining fully responsible for reporting, may contract with third-party service providers to facilitate reporting.[755]	The Regulation SBSR proposing release states that reporting could be carried out by a third-party agent, provided that the legal duty to report remains with the reporting party assigned as such by the proposed rule	**Equivalent**
No duplication. Counterparties and CCPs must ensure that the details of their derivative contracts are reported without duplication.[756]	*Reporting to a single SDR*. All swap data for a given swap must be reported to a single SDR, which must be the SDR to which the first report of swap creation data is made.[757]	*Additional information*. . Only one side is required to report the transaction.Life cycle event information updates must be provided to the same SBSDR to which the original transaction was reported.[758]	**Broadly Equivalent** EU Rules require reporting by both counterparties, subject to the ability of parties to make one report on behalf of both counterparties and the obligation to avoid duplication, while CFTC Rules and the proposed SEC rules assign the obligation to a single reporting party for each swap.

			EU Rules do not expressly require reporting of all data for a particular swap to a single trade repository, as the CFTC Rules do.
The performance of the Reporting Obligation (whether directly by a counterparty or a CCP or through an entity acting on its behalf) shall not be considered in breach of any restriction on disclosure of information imposed by that contract or by any legislative, regulatory or administrative provision and no liability resulting from such disclosure shall lie with the reporting entity or its directors or employees.[759]	While there is no specific equivalent provision, a requirement in a contract that prevents a party from reporting to an SDR or the CFTC as required by law is unlikely to be enforceable as a matter of public policy. CFTC reporting rules would also pre-empt any conflicting state laws or rules in this respect.	While there is no specific equivalent provision, a requirement in a private contract that prevents a party from reporting to an SBSDR or the SEC as required by law is unlikely to be enforceable as a matter of public policy and under provisions of the Exchange Act, rendering void any contract made in violation of the Exchange Act. SEC reporting rules would also pre-empt any conflicting US state laws or rules in this respect.	**Broadly Equivalent** EU Rules include specific provisions regarding liability for reporting, while US limitations are principles and laws of general applicability. However, practice in both legal systems suggests that the result of the provisions would be the same.
Registration with ESMA (EMIR Art 56 and RTS/ITS Art 56)	Registration with CFTC (DFA Sec 728, CFTC 49-3/27)	Registration with the SEC (Dodd-Frank Act Section 763(i); Release No. 34-63347)	**Equivalent**
Disclosure to the public and to relevant authorities Third countries authorities need to conclude an international agreement with the EU and a cooperation arrangement with ESMA. (EMIR Art 81 and RTS art 81)	*Disclosure* to the public and to relevant authorities Third countries authorities potentially subject to an indemnification requirement (DFA Sec 728-21(d) and CFTC 49-17/18)	*Disclosure* to the public and to relevant authorities Third countries authorities potentially subject to an indemnification requirement (Dodd-Frank Act Section 763(i); Release Nos. 34-63346 and 34-63347) Exchange Act Sections 21(a) and 24 and Rule 24c-1 thereunder provide the SEC with authority to share nonpublic information with certain domestic and foreign authorities. Thus, regulators may obtain TR data directly from the SEC without being subject to the indemnification re-	The US has a legislative challenge to data sharing in view of the indemnification provision which restricts the access of foreign competent authorities to SDRs. This element will be assessed in the context of the international agreement under EMIR Article 75 and US authorities are working towards solutions for ensuring access to data. The restriction above does not preclude data publication.

		quirement. To help enable regulators to obtain TR data directly from SBSDRs, the SEC proposed a rule providing exemptive relief from the indemnification requirement if certain conditions are met (e.g., a supervisory and enforcement MOU).	
A trade repository must regularly, and in an easily accessible way, publish aggregate positions by class of derivatives on the contracts reported to it.[760] *Scope of disclosure.*[761] The data, which may not allow the identification of any party to any contract,[762] must include at least: (a) a breakdown of the aggregate open positions for each of the following classes of derivatives: commodities; credit; foreign exchange; equity; interest rate; or other; (b) a breakdown of aggregate transaction volumes for each of the classes of derivatives mentioned in (a) above; (c) a breakdown of aggregate values for each of the classes of assets mentioned in (a) above. *Means of disclosure.*[763] The data must be published on a website or an online portal which is easily accessible by the public. *Frequency of disclosure.*[764] The data	An SDR may publicly disclose aggregated swap data on a voluntary basis or as requested, in the form and manner, prescribed by the CFTC.[765]	SEC Proposed Rule 902(a) would require a registered SBSDR to publicly disseminate a transaction report of a SBS, other than a block trade, immediately upon (1) receipt of information about the SBS from a reporting side, or (2) re-opening following a period when the registered SDR was closed. SEC proposed Rule 902(b) would require a registered SDR to pubcliclypublicly disseminate a transaction report of a SBS that constitutes a block trade immediately upon receipt of information about the block trade from the reporting party. With respect to public disclosure of aggregated data, an SBSDR would be able to publicly disclose such data on a voluntary basis and market participants or data vendors easily could aggregate trading data based on the individual transaction reports disseminated by the SBSDR.	**Broadly Equivalent** EU Rules contain specific requirements for at least weekly disclosure of aggregate position data, while CFTC Rules require only swaps reports to be made public on a semi-annual basis. The CFTC also publishes an aggregate swaps report on transaction data. . SEC proposed rules provide for data dissemination, but without clear aggregation and timing details. Overall, the US rules do not specify such a regular reporting as the EU rules even if they do not forbid SDRs to publishing aggregate swap data and if SDRs may do so on a voluntary basis.

must be published and updated at least weekly.			
A trade repository must collect and maintain data and must ensure that certain authorities have direct and immediate access to the details of derivatives contracts they need to fulfil their respective responsibilities and mandates.[766] *Scope*[767] (i) Available data includes all transaction data allowing ESMA to fulfil its supervisory competences,[768] including transaction level data (a) for all counterparties within its jurisdiction, and (b) for derivative contracts where the reference entity of the derivative contract is located within its jurisdiction or where the reference obligation is sovereign debt of its jurisdiction.[769] (ii) ESMA must enact internal procedures in order to ensure appropriate staff access and any relevant limitations of access as regards non-supervisory activities under ESMA's mandate.[770] (iii) ESMA must share the information necessary for the exercise of their duties with other	An SDR must provide direct electronic access to the CFTC or the CFTC's designee, including another registered entity, in order for the CFTC to carry out its legal and statutory responsibilities under the CEA and related regulations.[772] An SDR is required to provide the CFTC with proper tools for the monitoring, screening and analysing of swap transaction data.[773] The swap transaction data provided to the CFTC must be accessible only be authorized users and the SDR must maintain and provide a list of authorized users.[774]	An SBSDR must provide direct electronic access to the SEC or the SEC's designee(s), including another registered entity,[775] and must promptly report to the SEC, in a form and manner acceptable to the SEC, such information as the SEC determines to be necessary or appropriate for the SEC to perform its duties under the Exchange Act and related regulations.[776]	**Broadly Equivalent** CFTC Rules mandate the provision of direct electronic access to the CFTC, while EU Rules mandate such direct access by regulatory authorities in accordance with the relevant internal communication procedures and standards for messaging and reference data. CFTC Rules require an SDR to provide the CFTC with tools for monitoring, screening and analysing swap data, while EU Rules do not. The proposed SEC Rules would mandate the provision of direct electronic access to the SEC, or its designee(s), while EU Rules mandate such direct access by regulatory authorities in accordance with the relevant internal communication procedures and standards for messaging and reference data.

relevant authorities of the Union.[771]			
The ESRB. Available data includes transaction level data (a) for all counterparties within its jurisdiction, and (b) for derivative contracts where the reference entity of the derivative contract is located within its jurisdiction or where the reference obligation is sovereign debt of its jurisdiction.[777] *The competent authority supervising CCPs accessing trade repositories.* Available data includes all the transaction data cleared or reported by the CCP.[778] *The competent authority supervising trading venues of the reported contracts.* Available data includes all the transaction data on contracts executed on those venues.[779] *The relevant members of the ESCB.* (i) Available data includes all the transaction data cleared or reported by the relevant CCP overseen by that member of the ESCB.[780] (ii) Available data also includes transaction level data (a) for all	An appropriate domestic regulator[783] that has jurisdiction over an SDR pursuant to separate statutory authority may access data maintained by the SDR if it executes a memorandum of understanding or similar information sharing arrangement with the CFTC and the CFTC designates it to receive direct electronic access.[784] Any other appropriate domestic regulator must apply for access with the SDR, certify that it is acting within the scope of its jurisdiction, and execute a confidentiality and indemnification agreement with the SDR.[785] Section 21 of the CEA imposes certain restrictions on and conditions to access data in a registered SDR. Sections 21(c)(7) and (d) grant access to certain enumerated parties—including foreign futures authorities, foreign central banks and foreign ministries—either by the CFTC pursuant to the confidentiality requirements of CEA section 8, or directly from the SDR pursuant to an agreement indemnifying the SDR and the CFTC for any expenses arising from litigation relating to confidential information. The CFTC Part 49 rules relating to registered SDRs specified	An SBSDR must, upon request and on a confidential basis, make available all data obtained by the SBSDR, including individual counterparty trade and position data, to specified domestic regulators.[786] Such domestic regulators must execute a confidentiality and indemnification agreement with the SBSDR.[787] The proposing SBSDR release states that "pursuant to Exchange Act Section 24 and Rule 24c-1 thereunder, the [SEC] may share nonpublic information in its possession with, among others, 'federal, state, local, or foreign government, or any political subdivision, authority, agency or instrumentality of such government . . . . [or] a foreign financial regulatory authority.'" To help enable regulators to obtain TR data directly from SBSDRs, the SEC proposed a rule providing exemptive relief from the indemnification requirement if certain conditions are met (e.g., a supervisory and enforcement MOU) (Release No. 34-69490)	**Not equivalent** As mentioned above the indemnification requirement restricts the access to foreign regulators, despite the CFTC and SEC proposals/rules described on the left columns and although solutions are being discussed amongst EU and US authorities.

counterparties within its jurisdiction, and (b) for derivative contracts where the reference entity of the derivative contract is located within its jurisdiction or where the reference obligation is sovereign debt of its jurisdiction.[781] (iii) Available data includes all position data for derivative contracts in the currency issued by that member.[782]	that confidential swap data reported to and maintained by an SDR may be accessed by an "appropriate foreign regulator" without a confidentiality and indemnification agreement when the SDR is also registered with that foreign regulator. To provide further clarity, the CFTC subsequently issued interpretive guidance explaining that a foreign regulator's access to data held in a registered SDR that is also registered, recognised or otherwise authorised in a foreign jurisdiction's regulatory regime, where the data to be accessed has been reported to that regulatory regime, will be dictated by the foreign jurisdiction's regulatory regime and not by the CEA or CFTC regulations.		
The relevant authorities of a third country that have entered into an international agreement with the Union regarding mutual access to, and exchange of, information on derivative contracts held in trade repositories established in a third country.[788] Available data will be determined taking into account the relevant authority's mandate and responsibilities.[789]	An appropriate foreign regulator[790] that has supervisory authority over an SDR registered with it pursuant to foreign law and/or regulation is not subject to any restrictions on accessing swap data held at the SDR.[791] Any other appropriate foreign regulator must apply for access with the SDR, certify that it is acting within the scope of its jurisdiction, and execute a confidentiality and indemnification agreement with the SDR.[792] Such confidentiality and	An SBSDR must, upon request and on a confidential basis, make available all data obtained by the SBSDR, including individual counterparty trade and position data, to any person the SEC determines to be appropriate, including foreign financial supervisors, foreign central banks and foreign ministries.[794] Such foreign regulators must execute a confidentiality and indemnification agreement with the SBSDR.[795]	**Not equivalent** EU Rules provide for data access by relevant authorities of foreign countries that have entered into an international agreement with the EU/MoU with ESMA, while CFTC Rules provide for access by foreign regulators subject to executing a mem-orandum of understanding with the CFTC and, depending on whether the SDR is registered with that foreign authority and/or data is reported pursuant to foreign regulations, execution of a confidentiality and indemnification agreement. EU Rules provide for data access by relevant

Where a third country has no trade repository, the requirement for an international agreement is waived.	indemnity provisions do not apply if the SDR is registered, recognized or otherwise authorized in a foreign jurisdiction's regulatory regime and the data sought to be accessed by the foreign regulatory authority has been reported to the SDR pursuant to the foreign jurisdiction's regulatory regime.[793]		authorities of foreign countries that have entered into an international agreement with the EU, while the proposed SEC Rules would require all foreign regulators to be determined appropriate by the SEC and execute a confidentiality and indemnification agreement.
• *The supervisory authorities appointed pursuant to the EU Directive on takeover bids.*[796] (a) Available data includes all the transaction data on derivatives where the underlying asset is a security issued by a company which meets one of the following conditions: (i) it is admitted to trading on a regulated market within their jurisdiction; (ii) it has its registered office or, where it has no registered office, its head office, in their jurisdiction; or (iii) it is an offeror for a company within (i) or (ii) and the consideration offered by the offeror includes securities. (b) Available data includes information on: (i) the underlying securities; (ii) the derivative class;	Both the SEC and the Department of Justice are appropriate domestic regulators that may receive direct electronic access to swap data if they execute a memorandum of understanding or similar information sharing arrangement with the CFTC, as described above.	Both the CFTC and the Department of Justice are among the specified domestic regulators that may receive access to information if they execute a confidentiality and indemnification agreement with the SBSDR, as described above.	**Not Equivalent** For the reasons already expressed above, EU authorities would be subject to the indemnification requirement.

(iiii) the sign of the position; (iv) the number of reference securities; (v) the counterparties to the derivatives.[797] • *The relevant securities and market authorities of the Union*. Available data includes all transaction data on markets, participants, contracts and underlying assets that fall within the scope of that authority according to its supervisory responsibilities and mandates.[798] • *The relevant authorities of a third country that have entered into a cooperation agreement with ESMA in relation to trade repositories*.[799] Available data will be determined taking into account the relevant authority's mandate and responsibilities.[800] • *The Agency for the Cooperation of Energy Regulators*. Available data includes all transaction regarding derivatives where the underlying asset is energy.[801] *For all of the aforementioned entities*. For the purposes of prudential supervision of counterparties subject to the Reporting Obligation,[802] available data includes all transaction data of such counterparties.[803]			

A TR must provide access to data to the authorities mentioned above, in accordance with the relevant international communication procedures and standards for messaging and reference data. The counterparties to a trade must generate a unique trade identifier for each derivative contract to enable trade repositories to aggregate and compare data across different trade repositories.	*SDR responsibilities*. An SDR must promptly notify the CFTC regarding any request received by an appropriate domestic regulator or an appropriate foreign regulator to gain access to the swap transaction data maintained by the SDR and must provide access to the requested data after providing such notification and, when required, obtaining a confidentiality and indemnification agreement.[804]	*SBSDR responsibilities*. An SBSDR must notify the SEC regarding any request for data received by a domestic or foreign regulator and must provide such data after providing such notification and obtaining a confidentiality and indemnification agreement.[805] The SEC proposed rules require the SBSDR to assign the transaction ID.	**Not equivalent** For the reasons already expressed above, EU authorities would be subject to the indemnification requirement. As regards data standards, thisis a pending matter, as a global solution will be needed for trade identification enabling worldwide reconciliation of TR-held data.

ANNEX V – Professional secrecy

Description of provision in EMIR	Description of the corresponding US provisions	Assessment of Equivalence
The Professional Secrecy Obligation (as defined below) applies to all persons (the "Relevant Persons") who work or have worked for: • the CCPs Competent Authorities; • ESMA; • the ESRB; • the competent authority supervising CCPs accessing trade repositories; • the competent authority supervising trading venues for derivative contracts; • the relevant members of the ESCB; • The relevant authorities of a third country that have entered into an international agreement with the Union regarding mutual access to, and exchange of, information on derivative contracts held in trade repositories established in a third country.[806] • the supervisory authorities appointed pursuant to the EU Directive on takeover	Information held by Federal Regulators, including the SEC and the CFTC, are subject to both the Privacy Act[818] and the Freedom of Information Act ("FOIA").[819] PRIVACY ACT Protects the rights of individuals to be protected against unwarranted invasions of their privacy stemming from Federal agencies' collection, maintenance, use, and disclosure of personal information about them. It covers information that can be retrieved by an individual's name or other identifier from systems of records (i.e., social security number; date of birth, etc.). • Coverage of the Privacy Act is defined as follows: o Record – "any item, collection, or grouping of information about an individual that is maintained by an agency, including but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name or identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph." o System of Records – "a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual." • In general, applies only to Federal agencies such as the CFTC and SEC. Self-regulatory organizations, exchanges, clearinghouses and other non-agencies are not subject to Privacy Act obligations. • Provides an individual the following rights: o To access, review, and obtain copies of records pertaining to the individual maintained by the Federal government;	**Equivalent** EMIR applies to employees of relevant authorities, and covers "confidential information", which is defined as confidential information received, exchanged or transmitted pursuant to EMIR. The U.S. Privacy Act covers information pertaining to individuals held by US agencies in a system of records maintained by the agency. The US Freedom of Information Act (FOIA), on the other hand, is structured principally as a means through which individuals may obtain disclosure of certain information held by US agencies, thereby providing transparency into US agency activity. Further, under FOIA, in many cases, affirmative steps must be taken by an individual or organization in order to secure confidential treatment of submitted information, whereas no action is required to secure protection under EMIR and the Privacy Act. With respect to permitted disclosures, EMIR and the Privacy Act both contain exceptions providing for disclosure, including in connection with certain legal proceedings, for routine official uses, or with consent. Conversely, FOIA contains exceptions to disclosure, only protecting certain information held by agencies, including trade secrets or privileged or confidential commercial or financial information as well as information that if disclosed would constitute a clearly unwarranted invasion of personal privacy. ESMA finds this compatible with the objectives and results regarding data protection under EMIR and the balance between privacy and public interest in derivatives details and counterparty details for risk monitoring, fighting market abuse and general transparency goals.

bids;[807] • the relevant securities and market authorities of the Union; • the relevant authorities of a third country that have entered into a cooperation agreement with ESMA in relation to trade repositories;[808] • the Agency for the Cooperation of Energy Regulators; and • the auditors and experts instructed by ESMA or the authorities mentioned above. ***Professional Secrecy Obligation.*** No Confidential Information (as defined below) that the Relevant Persons receive in the course of their duties may be divulged to any person or authority (the "Professional Secrecy Obligation").[809] The Relevant Persons other than Competent Authorities which receive Confidential Information pursuant to EMIR may use it only in the performance of their duties and for the exercise of their functions, in the case of the Competent Authorities, within the scope of EMIR or, in the case of other persons, for the purpose for which such information was provided to them or in the context	o To request an amendment to records that are incorrect; and o To obtain an accounting or list of disclosures of information about the individual. • Restricts disclosures of personally identifiable information maintained by the Federal government, subject to certain enumerated exceptions which include disclosures: o to those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties; o required under the Freedom of Information Act; o for a routine use; o to the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity; o to a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable; o to the National Archives and Records Administration as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Archivist of the United States or the designee of the Archivist to determine whether the record has such value; o to another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought; o to a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of	

of administrative or judicial proceedings specifically relating to the exercise of those functions, or both.[810] "Confidential Information" includes any confidential information received, exchanged or transmitted pursuant to EMIR.[811] ***Limitations to the scope of the Professional Secrecy Obligation.*** • Confidential Information may be divulgated provided it is in summary or aggregate form such that an individual CCP, trade repository or any other person cannot be identified;[812] • Confidential Information may be divulgated in connection with cases covered by criminal or tax law or to EMIR;[813] • Confidential Information not relating to third parties may be divulged in civil or commercial proceedings in connection with the bankruptcy or winding-up of a CCP;[814] • Confidential Information may be used for other non-commercial purposes when the person communicating such information consents	such individual; o to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee; o to the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the Government Accountability Office; o pursuant to the order of a court of competent jurisdiction; or o to a consumer reporting agency in accordance with section 3711 (e) of title 31. <u>Freedom of Information Act (FOIA)</u> Requires all agencies of the executive branch to disclose Federal agency records or information upon receiving a written request for them from any individual except for those records or portions of them that are protected from disclosure by certain exemptions and exclusions. • Any record may be obtained through the FOIA, provided that the record is not exempt from release by one of the following nine FOIA exemptions, which protects documents or information that are: o properly classified as secret in the interest of national defence or foreign policy; o related solely to internal personnel rules and practices; o specifically exempted by other statutes; o trade secrets or privileged or confidential commercial or financial information; o privileged inter-agency or intra-agency memoranda or letters; o personnel, medical, or similar files, the release of which would constitute a clearly unwarranted invasion of personal privacy; o certain law enforcement documents; o contained in or related to examination, operating, or condition	

thereto;[815] • ESMA, the Competent Authorities or the relevant central banks may exchange or transmit Confidential Information in accordance with EMIR and with other legislation applicable to investment firms, credit institutions, pension funds, UCITS, AIFMs, insurance and reinsurance intermediaries, insurance undertakings, regulated markets or market operators or otherwise with the consent of the relevant person who communicated such information;[816] and • The Competent Authorities may, in accordance with national law, exchange or transmit Confidential Information not received from a Competent Authority of another Member State.[817]	reports about certain financial institutions; or o documents containing exempt information about gas or oil wells. • The FOIA also requires federal agencies to make certain documents available for public inspection and copying, and both the CFTC and SEC maintain a list of public information, which includes: o final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases; o those statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register; o administrative staff manuals and instructions to staff that affect a member of the public; o copies of all records, regardless of form or format, which have been released to any person pursuant to a FOIA request and which, because of the nature of their subject matter, the agency determines have become or are likely to become the subject of subsequent requests for substantially the same records; and o a general index of certain records; • The SEC and CFTC have both issued regulations regarding procedures for those submitting information to the Commissions to request confidential treatment. The confidential treatment request must specify the grounds for the request, which may include an unwarranted invasion of personal privacy or that disclosure would reveal trade secrets or confidential commercial or financial information. A detailed explanation of the grounds asserted for the request is not required, however, pursuant to SEC and CFTC Regulations, at the time a FOIA request is made that seeks material subject to a request for confidential treatment, the agencies may require a detailed written justification for the confidential treatment request, which may be granted or denied in whole or in part.[820] • The SEC's and CFTC's Regulations identify certain of the Commis-	

	sions' records as public information, including documents regarding the registration status, registration documents, periodic reports and disciplinary history of certain registered entities that are made available to the public even in absence of a specific FOIA request.[821] In particular: § 140.735-5 Disclosure of information, CFR, as regards the CFTC: "*A Commission employee or former employee shall not divulge, or cause or allow to be divulged, confidential or non-public commercial, economic or official information to any unauthorized person, or release such information in advance of authorization for its release. ... Except as directed by the Commission or its General Counsel as provided in these regulations, no Commission employee or former employee is authorized to accept service of any subpoena for documentary information contained in or relating to the files of the Commission. Any employee or former employee who is served with a subpoena requiring testimony regarding non-public information or documents shall, unless the Commission authorizes the disclosure of such information, respectfully decline to disclose the information or produce the documents called for, basing his refusal on these regulations. 10 Any employee or former employee who is served with a subpoena calling for information regarding the Commission's business shall promptly advise the General Counsel of the service of such subpoena, the nature of the information or documents sought, and any circumstances which may bear upon the desirability of making such information or document available in the public interest. ... In any proceeding in which the Commission is not a party, no employee of the Commission shall testify concerning matters related to the business of the Commission unless authorized to do so by the Commission*". Section §140.23 of the CFR (following the Commodities Exchange Act): "*General access requirements. (a) Determination of trustworthiness. No person shall be given access to classified information unless a favorable determination has been made as to the person's trustworthiness. The determination of eligibility, referred to as a security clearance, shall be based on such investigations as the Commission may require in accordance with the applicable Office of Personnel Management standards and criteria. (b) Determination of*	

	need-to-know. A person is not entitled to receive classified information solely by virtue of having been granted a security clearance. A person must also have a need for access to the particular classified information sought in connection with the performance of official government duties or contractual obligations. The determination of that need shall be made by officials having responsibility for the classified information". As regards the SEC, their Rules and Regulations (§ 200.735-3 CFR) for instance also provide for similar rules[19]:" *(a) A member or employee shall comply with the requirements of 5 CFR part 2635, subpart A (General provisions) and in particular with the provisions of 5 CFR 2635.101 (Basic obligations of public service); 2635.103 (Applicability to members of the uniformed services); and 2635.104 (Applicability to employees on detail).(b) A member or employee of the Commission shall not: (1) Engage, directly or indirectly, in any personal business transaction or private arrangement for personal profit the opportunity for which arises because of his or her official position or authority, or that is based upon confidential or nonpublic information which he or she gains by reason of such position or authority. (2)(i) Divulge to any unauthorized person or release in advance of authorization for its release any nonpublic Commission document, or any information contained in any such document or any confidential information: (A) In contravention of the rules and regulations of the Commission promulgated under 5 U.S.C. 552, 552a and 552b; or (B) in circumstances where the Commission has determined to accord such information confidential treatment. (ii) Except where the Commission or the General Counsel, pursuant to delegated authority, has previously granted approval or in relation to a Commission administrative proceeding or a judicial proceeding in which the Commission, or a present or former Commissioner, or present or former member of the staff, represented by Commission counsel, is a party, any officer, employee or former officer or employee who is served with a subpoena requiring the disclosure of confidential or non-public information or documents shall, unless*	

[19] http://www.gpo.gov/fdsys/pkg/CFR-2012-title17-vol2/xml/CFR-2012-title17-vol2-sec200-735-3.xml

	the Commission or the General Counsel, pursuant to delegated authority, authorizes the disclosure of such information or documents, respectfully decline to disclose the information or produce the documents called for, basing his or her refusal on this paragraph. (iii) Any member, employee or former member or employee who is served with such a subpoena not covered by the exceptions in paragraph (b)(7)(ii) of this section shall promptly advise the General Counsel of the service of such subpoena, the nature of the information or documents sought, and any circumstances which may bear upon the desirability in the public interest of making available such information or documents...The Commission or the General Counsel, pursuant to delegated authority, shall authorize the disclosure of non-expert, non-privileged, factual staff testimony and the production of non-privileged documents when validly subpoenaed".	

ANNEX VI – Effective supervision and enforcement for TR provisions

Description of provision in EMIR	Description of corresponding CFTC provision	Description of corresponding SEC provision	Equivalent Assessment
SUPERVISION OF TRADE REPOSITORIES ENFORCEMENT AND PENALTIES			
Investigation Powers			
General limitation to ESMA's powers. ESMA may not use its powers to require the disclosure of information or documents which are subject to legal privilege.[822]	No provisions specific to SDRs. General investigatory provisions of the CEA and principles of legal privilege apply.	No provisions specific to SBSDRs. General investigatory provisions of the Exchange Act and principles of legal privilege apply.	**Equivalent** EU Rules specify protection for legally privileged information, while US protections for such information are principles of general applicability. EU Rules specify protection for legally privileged information, while US protections for such information are principles of general applicability. ESMA finds that these differences do not represent a major inconsistency as in both jurisdictions legal privilege applies, and the objective of enabling supervisory action whilst preserving TR and counterparty data protection is fulfilled.
Request of information. *Principle*. ESMA may require trade repositories and their subcontractors to provide all information that is necessary in order to carry out its duties under EMIR.[823] *Simple request*.[824] ESMA may exercise this power by sending a simple request for information, which must: (a) refer to EMIR, Art. 61 as the legal basis of the request; (b) state the purpose of the request;	No provisions specific to SDRs. Under CEA provisions of general applicability, the CFTC may, for the purpose of any investigation or proceeding, subpoena witnesses and compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda or other records that the CFTC deems relevant or	No provisions specific to SBSDRs. Under Exchange Act provisions of general applicability, the SEC may, for the purpose of any investigation or proceeding, subpoena witnesses and compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda or other records that the SEC deems relevant or material to the inquiry.[829] Every SBSDR shall, upon request of any	**Equivalent** EU rules specify particular procedures for investigations of trade repositories while the CEA provides for general investigatory and enforcement powers of the CFTC to enforce the CEA against any person. EU rules specify particular procedures for investigations of trade repositories while the Exchange Act provides for general investigatory and enforcement powers of the SEC to enforce the securities laws against any person.

Description of provision in EMIR	Description of corresponding CFTC provision	Description of corresponding SEC provision	Equivalent Assessment
(c) specify what information is required; (d) set a time limit within which the information is to be provided; (e) inform the person from whom the information is requested that he/she is not obliged to provide the information but that in case of a voluntary reply to the request the information provided must not be incorrect and misleading; and (f) indicate the fine provided for in conjunction with the provision of incorrect or misleading information. • *Decision.*[825] Alternatively, ESMA may exercise this power by way of decision, which must: (a) contain the mentions referred to in (a) to (d) and (f) above; (e) indicate the periodic penalty payments provided for where the production of the required information is incomplete;[826] and (g) indicate the right to appeal the decision before ESMA's Board of Appeal and to have the decision reviewed by the Court of Justice of the Union. • *Information of competent authorities.* ESMA must, without delay, send a copy of the simple request or of its decision to the competent authority of the Member State where the persons object of the request for information are domiciled or estab-	material to the inquiry.[828]	representative of the SEC, promptly furnish copies of documents to the possession of such representative (proposed SBSDR Rule, § 240.13n-7(b)(3)), and promptly report to the SEC, in a form and manner acceptable to the SEC, such information as the SEC determines to be necessary or appropriate for the SEC to perform the duties of the SEC under the Exchange Act and the rules and regulations thereunder. (proposed SBSDR Rule, § 240.13n-8)	One may therefore say that the US regime fulfils the EU objectives and is even more complete.

Description of provision in EMIR	Description of corresponding CFTC provision	Description of corresponding SEC provision	Equivalent Assessment
lished.[827]			
General investigations. *Principle*. In order to carry out its duties under EMIR, ESMA may conduct necessary investigations of trade repositories and their subcontractors.[830] *Investigating powers* include:[831] (a) examining any records, data, procedures and any other material relevant to the execution of ESMA's tasks irrespective of the medium on which they are stored; (b) taking or obtaining certified copies of, or extracts from, such records, data, procedures and other material; (c) summoning and asking trade repositories and their subcontractors or their representatives or staff for oral or written explanations on facts or documents relating to the subject matter and purpose of the inspection and recording the answers; (d) interviewing any other natural or legal person who consents to be interviewed for the purpose of collecting information relating to the	No provisions specific to SDRs. Under CEA provisions of general applicability, the CFTC may, for the purpose of any investigation or proceeding, subpoena witnesses and compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda or other records that the CFTC deems relevant or material to the inquiry.[836]	No provisions specific to SBSDRs. Under Exchange Act provisions of general applicability, the SEC may, for the purpose of any investigation or proceeding, subpoena witnesses and compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda or other records that the SEC deems relevant or material to the inquiry.[837]	**Equivalent** Although the US regime seems not to include specific provisions for TRs, the US regime includes similar provisions that cover TRs as well, thus being equivalent as the result attained is the same.

Description of provision in EMIR	Description of corresponding CFTC provision	Description of corresponding SEC provision	Equivalent Assessment
subject matter of an investigation; (e) requesting records of telephone and data traffic.[832] *Procedure.* (i) Trade repositories and their subcontractors must submit to investigations launched on the basis of a decision of ESMA. Such decision must specify:[833] (a) the subject matter and purpose of the investigation; (b) the periodic penalty payments provided for where the production of the required records, data, procedures or any other material, or the answers to questions asked are not provided or are incomplete;[834] (c) the legal remedies available under Regulation (EU) No 1095/2010; and (d) the right to have the decision reviewed by the Court of Justice of the Union. (ii) ESMA's officials or authorized persons shall exercise their powers upon production of a written authorization, which must specify: (a) the information mentioned in (a) and (b) above; and (c) the fines provided for in conjunction with the provision of incorrect of misleading answers to questions asked. *Role of the competent authority of the Member State where the investigation is to be carried*			

Description of provision in EMIR	Description of corresponding CFTC provision	Description of corresponding SEC provision	Equivalent Assessment
out.[835] (i) In good time before the investigation, ESMA must inform such authority of the investigation and of the identity of ESMA's authorized persons. (ii) Officials of such authority must, upon the request of ESMA, assist those authorized persons in carrying out their duties. (iii) Officials of such authority may also attend the investigations upon request.			
Inspections to TRs			
In order to carry out its duties under EMIR, ESMA may conduct all necessary on-site inspections at any business premises or land of the trade repositories or their subcontractors. Where the proper conduct and efficiency of the inspection so require, ESMA may carry out the on-site inspection without prior announcement.[838] *ESMA's powers.*[839] ESMA's officials and authorized persons: (i) may enter any business premises or land of the entities; (ii) shall have all the general investigation powers described above; (ii) shall have the power to seal any business premises and books or records for the period of, and to the extent necessary for, the inspection.	An SDR must subject itself to inspection and examination by the CFTC.[840] Any SDR located outside of the United States applying for registration with the CFTC must certify on Form SDR and provide an opinion of counsel that the SDR, as a matter of law, is able to provide the CFTC with prompt access to the books and records of such swap data repository and that the SDR can submit to onsite inspection and examination by the CFTC.[841]	An SBSDR must subject itself to inspection and examination by the SEC.[842] Any non-resident SBSDR[843] applying for registration with the SEC must certify on Form SDR and provide an opinion of counsel that the SBSDR can, as a matter of law, provide the SEC with prompt access to the books and records of such SBSDR and that the SBSDR can, as a matter of law, submit to onsite inspection and examination by the SEC.[844]	**Equivalent** CFTC Rules require SDRs located outside the United States to certify and provide an opinion of counsel regarding CFTC access to records and submission to onsite inspection and examination, while EU Rules do not.[845] Similarly, proposed SEC Rules would require non-resident SBSDRs to certify and provide an opinion of counsel regarding SEC access to records and submission to onsite inspection and examination, while EU Rules do notThis means the US regime is not only equivalent, but actually more complete.

Description of provision in EMIR	Description of corresponding CFTC provision	Description of corresponding SEC provision	Equivalent Assessment
Procedure. (i) Trade repositories and their subcontractors must submit to on-site inspections ordered by an investigation decision adopted by ESMA.[846] Such decision must specify:[847] (a) the subject matter and purpose of the inspection; (b) the date on which it is to begin; (c) the periodic penalty payments provided for where the relevant persons do not submit to the inspection;[848] (d) the legal remedies available under Regulation (EU) No 1095/2010; and (d) the right to have the decision reviewed by the Court of Justice of the Union. (ii) ESMA's officials or authorized persons must exercise their powers upon production of a written authorization, which must specify:[849] (a) the subject matter and purpose of the inspection; and (b) the periodic penalty payments provided for where the relevant persons do not submit to the inspection;[850]	An SDR must subject itself to inspection and examination by the CFTC.[851]	An SBSDR must subject itself to inspection and examination by the SEC.[852]	**Equivalent**

Description of provision in EMIR	Description of corresponding CFTC provision	Description of corresponding SEC provision	Equivalent Assessment
Supervisory Measures and Penalties			
Infringements			
853 *Infringements relating to organizational requirements or conflicts of interest.* (a) not having robust governance arrangements which include a clear organizational structure with well-defined, transparent and consistent lines of responsibility and adequate internal control mechanisms, including sound administrative and accounting procedures, which prevent the disclosure of confidential information;[854] (b) not maintaining or operating effective written organizational and administrative arrangements to identify and manage any potential conflicts of interest concerning its managers, its employees, and any person directly or indirectly linked to them by close links;[855] (c) not establishing adequate policies and procedures sufficient to ensure compliance, including that of its managers and employees, with all the provisions of EMIR;[856] (d) not maintaining or operating an adequate organizational structure to ensure continuity and orderly functioning of the trade repository in the performance of its services and activities;[857] (e) not separating operationally its ancillary	No provisions specific to SDRs; general penalty provisions of CEA apply.	No provisions specific to SBSDRs; general penalty provisions of securities laws apply.	**Equivalent** EU Rules specify particular infringements and penalties for trade repositories while the CEA and the Exchange Act provide for sanctions or penalties for any breach by a registered entity of its regulatory obligations. Although the US regime does not to include specific provisions for TRs, the general US regime includes similar provisions that cover TRs as well, thus being equivalent as the result attained is the same.

Description of provision in EMIR	Description of corresponding CFTC provision	Description of corresponding SEC provision	Equivalent Assessment
services from its function of centrally collecting and maintaining records of derivatives;[858] (f) not ensuring that its senior management and the members of the board are of sufficiently good repute and experience so as to ensure the sound and prudent management of the trade repository;[859] (g) not having objective non-discriminatory and publicly disclosed requirements for access by services providers and undertakings subject to the Reporting Obligation;[860] (h) not publicly disclosing the prices and fees associated with services provided under EMIR, by not allowing reporting entities to access specific services separately or by charging prices and fees that are not cost related.[861]			
Infringements relating to operational requirements. (a) not identifying sources of operational risk or by not minimizing those risks through the development of appropriate systems, controls and procedures;[862] (b) not establishing, implementing or maintaining an adequate business continuity policy and disaster recovery plan aimed at ensuring the maintenance of its functions, the timely recovery of operations and the fulfilment of the trade repository's obligations;[863] (c) not ensuring the confidentiality, integrity or protection of the information received under the Reporting Obligation;[864]	No provisions specific to SDRs; general penalty provisions of CEA apply.	No provisions specific to SBSDRs; general penalty provisions of securities laws apply.	**Equivalent** Although the US regime does not to include specific provisions for TRs, the general US regime includes similar provisions that cover TRs as well, thus being equivalent as the result attained is the same.

Description of provision in EMIR	Description of corresponding CFTC provision	Description of corresponding SEC provision	Equivalent Assessment
(d) using the data that it receives under EMIR for commercial purposes without the relevant counterparties' consent;[865] (e) not promptly recording the information received under the Reporting Obligation or by not maintaining it for at least 10 years following the termination of the relevant contracts or by not employing timely and efficient record-keeping procedures to document changes to recorded information;[866] (f) not calculating the positions by class of derivatives and by reporting entity based on the details of the derivative contracts reported in accordance with the Reporting Obligation;[867] (g) not allowing the parties to a contract to access and correct the information on that contract in a timely manner;[868] (h) not taking all reasonable steps to prevent any misuse of the information maintained in its systems.[869]			
Infringements relating to transparency and the availability of information. (a) not regularly publishing, in an easily accessible way, aggregate positions by class of derivatives on the contracts reported to it;[870] (b) not allowing the relevant authorities direct and immediate access to the details of derivatives contracts they need to fulfil their respective responsibilities and mandates.[871]	No provisions specific to SDRs; general penalty provisions of CEA apply.	No provisions specific to SBSDRs; general penalty provisions of securities laws apply.	**Equivalent** Although the US regime does not to include specific provisions for TRs, the general US regime includes similar provisions that cover TRs as well, thus being equivalent as the result attained is the same.

Description of provision in EMIR	Description of corresponding CFTC provision	Description of corresponding SEC provision	Equivalent Assessment
Infringements relating to obstacles to the supervisory activities. (a) providing incorrect or misleading information in response to a simple request[872] for information by ESMA or in response to a decision[873] by ESMA requiring information;[874] (b) providing incorrect or misleading answers to questions asked in the course of general investigations;[875] (c) not complying in due time with a supervisory measure adopted by ESMA.[876]	No provisions specific to SDRs; general penalty provisions of CEA apply.	No provisions specific to SBSDRs; general penalty provisions of securities laws apply.	**Equivalent** Although the US regime does not to include specific provisions for TRs, the general US regime includes similar provisions that cover TRs as well, thus being equivalent as the result attained is the same.
Investigations, Process and Decisions			
Where, in carrying out its duties under EMIR, ESMA finds that there are serious indications of the possible existence of facts liable to constitute one or more of the infringements listed above, ESMA must appoint an independent investigation officer within ESMA to investigate the matter.[877] *Independence of the investigating officer.* The appointed officer may not be involved or have been directly or indirectly involved in the supervision or the registration process of the relevant trade repository and must perform his functions independently from ESMA.[878] *Investigation powers of the investigation officer.*[879] The investigation officer shall investigate the alleged infringements, through the exercise of: (a) the power to request information;	No provisions specific to SDRs. Under CEA provisions of general applicability, the CFTC may, for the purpose of any investigation or proceeding, subpoena witnesses and compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda or other records that the CFTC deems relevant or material to the inquiry.[896]	No provisions specific to SBSDRs. Under Exchange Act provisions of general applicability, the SEC may, for the purpose of any investigation or proceeding, subpoena witnesses and compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda or other records that the SEC deems relevant or material to the inquiry.[897]	**Equivalent** Although the US regime does not to include specific provisions for TRs, the general US regime includes similar provisions that cover TRs as well, thus being equivalent as the result attained is the same.

Description of provision in EMIR	Description of corresponding CFTC provision	Description of corresponding SEC provision	Equivalent Assessment
(b) the power to conduct investigations; and (c) the power to conduct on-site inspections. When carrying out its tasks, the investigation officer shall have access to all documents and information gathered by ESMA in its supervisory activities. • *Due Process.* Upon completion of his investigation and before submitting the file with his findings to ESMA, the investigation officer must give the persons subject to the investigations the opportunity to be heard on the matters being investigated. The investigation officer must base his findings only on facts on which the persons concerned have had the opportunity to comment.[880] Due process must be fully complied with during investigations.[881] When submitting the file with his findings to ESMA, the investigation officer must notify that fact to the persons who are subject to the investigations. Such persons are entitled to have access to the file, subject to the legitimate interest of other persons in the protection of their business secrets. The right of access to the file does not extend to confidential information affecting third parties.[882] • *ESMA's decision.*[883] On the basis of the file containing the investigating officer's findings and, when requested by the persons concerned, after having heard the persons subject to the investigations,[884] ESMA must decide if one or more infringements[885] has been commit-	Investigations and enforcement actions are subject to generally applicable US principles of due process.	Investigations and enforcement actions are subject to generally applicable US principles of due process.	

Description of provision in EMIR	Description of corresponding CFTC provision	Description of corresponding SEC provision	Equivalent Assessment
ted by the persons who have been subject to the investigations.[886] If so, ESMA may take one or more of the following supervisory measures:[887] (a) requiring the trade repository to bring the infringement to an end; (b) imposing fines;[888] (c) issuing public notices; (d) as a last resort, withdrawing the registration of the trade repository; taking into account the nature and seriousness of the infringement, and having regard to the following criteria: (a) the duration and frequency of the infringement; (b) whether the infringement has revealed serious or systemic weaknesses in the undertaking's procedures or in its management systems or internal controls; (c) whether financial crime has been occasioned, facilitated or otherwise attributable to the infringement; and (d) whether the infringement has been committed intentionally or negligently. • *Notification and publication of ESMA's decision.*[889] Without undue delay, ESMA must notify any decision imposing supervisory measures to the trade repository concerned, and must communicate it to the competent authori-			

Description of provision in EMIR	Description of corresponding CFTC provision	Description of corresponding SEC provision	Equivalent Assessment
ties of the Member States and to the Commission. ESMA must publicly disclose any such decision on its website within 10 working days from the date when it was adopted.[890] • *Criminal prosecution.*[891] ESMA may refer matters for criminal prosecution to the relevant national authorities where, in carrying out its duties under EMIR, it finds that there are serious indications of the possible existence of facts liable to constitute criminal offences. In addition, ESMA must refrain from imposing fines or periodic penalty payments where a prior acquittal or conviction arising from identical fact or facts which are substantially the same has already acquired the force of *res judicata* as the result of criminal proceedings under national law. • *Delegation of tasks by ESMA to competent authorities.*[892] Where necessary for the proper performance of supervisory tasks, ESMA may delegate specific supervisory tasks (including the power to request information[893] and the power to conduct investigation[894] and on-site inspection[895]) to the competent authority of a Member State. However, supervisory responsibilities under EMIR, including registration decision, final assessments and follow-up decisions concerning infringements, may not be delegated.			

Description of provision in EMIR	Description of corresponding CFTC provision	Description of corresponding SEC provision	Equivalent Assessment
	Under principles of general applicability, the CFTC may refer violations of the CEA and other applicable laws to the US Department of Justice for criminal prosecution.	Under principles of general applicability, the SEC may refer violations of the Exchange Act and other applicable laws to the US Department of Justice for criminal prosecution.	

Description of provision in EMIR	Description of corresponding CFTC provision	Description of corresponding SEC provision	Equivalent Assessment
Sanctions			
Fines			
[898] Where ESMA finds that a trade repository has, intentionally or negligently, committed one of the infringements listed above, it must adopt a decision imposing a fine. An infringement is considered to have been committed intentionally if ESMA finds objective factors which demonstrate that the trade repository or its senior management acted deliberately to commit the infringement. *Basic amounts of the fines.*[899] (i) for the infringements referred to in point (c) of the "infringements relating to organizational requirements or conflicts of interest" listed above and in points (c) to (g) of the "infringements relating to operational requirements" listed above, and in points (a) and (b) of the "infringements relating to transparency and the availability of information" listed above: the amounts of the fines shall be at least €10,000 and must not exceed €20,000; (ii) for the infringements referred to in points (a), (b) and (d) to (h) of the "infringements relating to organizational requirements or conflicts of interest" listed above, and in points (a), (b) and (h) of the "infringements relating to operational requirements" listed above: the amounts of the fines shall be at least €5,000	No provisions specific to SDRs; general penalty provisions of CEA apply.	No provisions specific to SBSDRs; general penalty provisions of securities laws apply.	**Equivalent** Although the US regime does not to include specific provisions for TRs, the general US regime includes similar provisions that cover TRs as well, thus being equivalent as the result attained is the same.

Description of provision in EMIR	Description of corresponding CFTC provision	Description of corresponding SEC provision	Equivalent Assessment
and must not exceed €10,000. In order to decide whether the basic amount of the fines should be at the lower, the middle or the higher end of the limits set out above, ESMA must have regard to the trade repository's annual turnover for the preceding business year and must determine the amount of the fines as follows: (i) the basic amount shall be at the lower end of the limit for trade repositories whose annual turnover is below €1 million; (ii) the basic amount shall be at the middle of the limit for trade repositories whose turnover is between €1 and €5 million; and (iii) the basic amount shall be at the higher end of the limit for trade repositories whose annual turnover is higher than €5 million. *Adjustments to the basic amounts.*[900] The basic amounts set out above shall be adjusted, if need be, by taking into account aggravating or mitigating factors in accordance with the relevant coefficients set out below. (i) Coefficients.[901] Adjustment coefficients linked to aggravating factors: (a) if the infringement has been committed repeatedly, for every time it has been repeated, an additional coefficient of 1,1 shall apply; (b) if the infringement has been committed for more than six months, a coefficient of 1,5 shall			

Description of provision in EMIR	Description of corresponding CFTC provision	Description of corresponding SEC provision	Equivalent Assessment
apply; (c) if the infringement has revealed systemic weaknesses in the organization of the trade repository, in particular in its procedures, management systems or internal controls, a coefficient of 2,2 shall apply; (d) if the infringement has a negative impact on the quality of the data it maintains, a coefficient of 1,5 shall apply; (e) if the infringement has been committed intentionally, a coefficient of 2 shall apply; (f) if no remedial action has been taken since the breach has been identified, a coefficient of 1,7 shall apply; and (g) if the trade repository's senior management has not cooperated with ESMA in carrying out its investigations, a coefficient of 1,5 shall apply. Adjustment coefficients linked to mitigating factors: (a) if the infringement has been committed for less than 10 working days, a coefficient of 0,9 shall apply; (b) if the trade repository's senior management can demonstrate to have taken all the necessary measures to prevent the infringement, a coefficient of 0,7 shall apply; (c) if the trade repository has brought quickly, effectively and completely the infringement to ESMA's attention, a coefficient of 0,4 shall apply;			

Description of provision in EMIR	Description of corresponding CFTC provision	Description of corresponding SEC provision	Equivalent Assessment
(d) if the trade repository has voluntarily taken measures to ensure that a similar infringement cannot be committed in the future, a coefficient of 0,6 shall apply. (ii) Application of the coefficients. Aggravating coefficients. The relevant aggravating coefficients may be applied one by one to the basic amount. If more than one aggravating coefficient is applicable, the difference between the basic amount and the amount resulting from the application of each individual aggravating coefficient shall be added to the basic amount. Mitigating coefficients. The relevant mitigating coefficients shall be applied one by one to the basic amount. If more than one mitigating coefficient is applicable, the difference between the basic amount and the amount resulting from the application of each individual mitigating coefficient shall be subtracted from the basic amount. *General limitation on the amount of the fines.*[902] (i) Notwithstanding the foregoing, the amount of the fine may not exceed 20 % of the trade repository's annual turnover in the preceding business year. However, where the trade repository has directly or indirectly benefited financially from the infringement, the amount of the fine shall be at least equal to that benefit. (ii) Where an act or omission of a trade repository constitutes more than one of the			

Description of provision in EMIR	Description of corresponding CFTC provision	Description of corresponding SEC provision	Equivalent Assessment
infringements listed above, only the higher fine calculated as set out above and relating to one of those infringements shall apply.			
Periodic penalty payments			
[903] ESMA must, by decision, impose periodic penalty payments in order to compel: (a) a trade repository to put an end to an infringement;[904] or (b) a trade repository or its subcontractors: (i) to supply complete information which has been requested by a decision;[905] (ii) to submit to an investigation and in particular to produce complete records, data, procedures or any other material required and to complete and correct other information provided in an investigation launched by a decision;[906] or (iii) to submit to an on-site inspection ordered by a decision.[907] *Amount.* (i) A periodic penalty payment must be effective and proportionate and may be imposed for each day of delay.[908] (ii) The amount of the periodic penalty	No provisions specific to SDRs; general penalty provisions of CEA apply.	No provisions specific to SBSDRs; general penalty provisions of securities laws apply.	**Equivalent** Although the US regime does not to include specific provisions for TRs, the general US regime includes similar provisions that cover TRs as well, thus being equivalent as the result attained is the same.

Description of provision in EMIR	Description of corresponding CFTC provision	Description of corresponding SEC provision	Equivalent Assessment
payments shall be 3% of the average daily turnover in the preceding business year, or, in the case of natural persons, 2% of the average daily income in the preceding calendar year. It may be calculated from the date stipulated in the decision imposing the periodic penalty payment.[909] (iii) A periodic penalty payment may be imposed for a maximum period of six months following the notification of ESMA's decision. Following the end of the period, ESMA must review the measure.[910]			
Disclosure of penalties			
911 ESMA must disclose to the public every fine and periodic penalty payment that it imposes unless such disclosure to the public would seriously jeopardize the financial markets or cause disproportionate damage to the parties involved.[912] Where ESMA decides to impose no fines or penalty payments, it must inform the European Parliament, the Council, the Commission, and the competent authorities of the Member State concerned accordingly and must set out the reasons for its decision.	No provisions specific to SDRs; general penalty provisions of CEA apply.	No provisions specific to SBSDRs; general penalty provisions of securities laws apply.	**Equivalent** Although the US regime does not to include specific provisions for TRs, the general US regime includes similar provisions that cover TRs as well, thus being equivalent as the result attained is the same.

Description of provision in EMIR	Description of corresponding CFTC provision	Description of corresponding SEC provision	Equivalent Assessment
Withdrawal of registration			
ESMA's decision. ESMA may withdraw the registration of a trade repository where the trade repository: (a) expressly renounces the registration or has provided no services for the preceding six months; (b) obtained the registration by making false statements or by any other irregular means; or (c) no longer meets the conditions under which it was registered.[913]	*CFTC action.* If, after notice and opportunity for hearing, the CFTC finds that any registered SDR has obtained registration by making any false or misleading statements with respect to any material fact or has violated or failed to comply with any provision of the CEA and regulations thereunder, the CFTC, by order, may revoke the registration or, pending final determination, suspend such registration.[914]	*SEC action.* If the SEC finds, on the record after notice and opportunity for hearing, that any registered SBSDR has obtained its registration by making any false and misleading statements with respect to any material fact or has violated or failed to comply with any provision of the federal securities laws and regulations thereunder, the SEC, by order, may revoke the registration or, pending final determination, suspend such registration.[915] If the SEC finds that the registered SBSDR is no longer in existence or has ceased to do business in the capacity specified in its application for registration, the SEC, by order, may cancel the registration.[916]	**Equivalent** CFTC and Proposed SEC rules expressly allow for suspension of registration pending final determination, while EU Rules do not.[917] Nevertheless, ESMA finds that the essential element in this context is the possibility to withdraw, rather than suspend, a registration, and both jurisdictions include this possibility. The suspension possibility is regarded as an extra, with no impact in this assessment.
Notification. ESMA must, without undue delay, notify the relevant competent authority which has authorized or registered the trade repository in the relevant Member State[918] of a withdrawal decision.[919]	*Notification.* A registered SDR may withdraw its registration with at least sixty days written notice to the CFTC, which must include information regarding the custodial SDR that will have custody of data and records of the withdrawing SDR and a statement that the custodial SDR is authorized to make	*Notification.* A registered SBSDR may withdraw from registration with at least sixty days written notice to the SEC, which must include a designation of a person associated with the SBSDR to serve as the custodian of the SBSDR's books and records.[922] Prior to filing a notice of withdrawal, an SBSDR must file an amended Form SDR to update	**Equivalent** CFTC and proposed SEC rules include a specific 60 day period and requirements regarding the notification process, while EU Rules do not. ESMA finds, however, that this is a procedural difference that does not affect the objective or result of the rules, i.e. ensure due process, which is ensured under both legal systems.

Description of provision in EMIR	Description of corresponding CFTC provision	Description of corresponding SEC provision	Equivalent Assessment
	such data and records available.[920] Prior to filing a withdrawal request, the SDR must file an amended Form SDR to update any inaccurate information.[921]	any inaccurate information.[923]	

ANNEX VII – Legally binding requirements which are equivalent to those in Article 4, 10 and 11 of EMIR

Description of the EMIR provisions on OTC derivatives	Description of the corresponding CFTC provisions	Description of the corresponding SEC provisions	Assessment of Equivalence
A. Clearing obligation (Article 4)			
Clearing obligation Principle: Financial and non-financial counterparties above the clearing threshold must clear all OTC derivative contracts pertaining to a class of OTC derivatives that has been declared subject to the clearing obligation, if they meet certain conditions (the "Clearing Obligation").	***Clearing obligation*** Principle. It is unlawful for any person to engage in any of a class of swaps that the CFTC determines is required to be cleared ("Clearing Requirement Determination"), unless that person submits such swap for clearing to a DCO that is registered under the CEA or a DCO that is exempt from registration under the CEA.[924] In addition, with respect to a swap not subject to a Clearing Requirement Determination and entered into by an SD or an MSP with a counterparty that is not an SD, MSP, SBSD or MSBSP, the counterparty may elect to require the swap to be cleared.[925]	***Clearing obligation*** Principle. It is unlawful for any person to engage in an SBS that the SEC determines is required to be cleared (a "Clearing Requirement Determination") unless that person submits such SBS to a clearing agency that is registered with the SEC or with a clearing agency that is exempt from registration under the Exchange Act.[926] In addition, with respect to any SBS that is not subject to a Clearing Requirement Determination entered into by an SBSD or an MSBSP with a counterparty that is not an SBSD, MSBSP, SD, or MSP, the counterparty may elect to have the swap cleared.[927]	**Broad equivalence** Both the EU and the US have a clearing obligation that applies to a wide variety of market participants. Both the EU and the US have similar procedures for determining the clearing obligation (bottom-up and top-down approach). Both the EU and the CFTC (not yet known for the SEC) allow for both direct and indirect clearing for the purpose of complying with the clearing obligation. Both the EU and the US allow the relevant contract to be cleared in an authorised or recognised/exempted CCP. Both the EU and the US apply the clearing obligation to contracts concluded following the clearing obligation process has started/concluded. As for the scope of application many differences applies on the entities subject to the obligation and on the exemptions (as analysed below).

Description of the EMIR provisions on OTC derivatives	Description of the corresponding CFTC provisions	Description of the corresponding SEC provisions	Assessment of Equivalence
			However, the differences are both in the EU and the US regime and it is not possible to determine which regime is more inclusive. Finally it should be noted that many rules of the SEC are not final and in certain cases have not been proposed yet (intragroup and indirect clearing). However, the absence of these rules does not seem to materially impact the overall assessment on the framework for the clearing obligation.

Description of the EMIR provisions on OTC derivatives	Description of the corresponding CFTC provisions	Description of the corresponding SEC provisions	Assessment of Equivalence
Parties subject to the clearing obligation The Clearing Obligation applies to OTC derivative contracts entered into between: (i) two financial counterparties; (ii) a financial counterparty and a non-financial counterparty above the clearing threshold; (iii) two Non-Financial Counterparties above the clearing threshold; (iv) a financial counterparty or a Non-Financial Counterparty above the clearing threshold and an entity established in a third country that would be subject to the Clearing Obligation if it were established in the Union; or (v) two entities established in one or more third countries that would be subject to the Clearing Obligation if they were established in the Union, provided that the contract has a direct, substantial and foreseeable effect within the Union or where such an obligation is necessary or appropriate to prevent the evasion of any provisions of EMIR.	***Parties subject to the clearing obligation*** The Clearing Requirement Determination generally applies to swaps entered into between: (i) two counterparties that are both financial entities; (ii) a counterparty that is a financial entity and a counterparty that either would otherwise be a non-financial entity but exceeds the threshold for being an MSP or MSBSP or is a non-financial counterparty entering into a swap not for the purpose of hedging or mitigating commercial risk (or otherwise not electing the End-User Exception); (iii) two non-financial counterparties entering into a swap not for the purpose of hedging or mitigating commercial risk (or otherwise not electing the End-User Exception). Activities outside the US are generally excluded from the Dodd-Frank requirements applicable to swaps unless those activities have a significant connection with activities in, or effect on, commerce in the United States or contravene the CFTC's anti-evasion rules.	***Parties subject to the clearing obligation*** Under the Exchange Act and proposed SEC Rules, the Clearing Requirement Determination would generally apply to SBS entered into between: (i) two counterparties that are both financial entities;[928] (ii) a counterparty that is a financial entity and a counterparty that either would otherwise be a non-financial entity but exceeds the threshold for being an MSP or MSBSP and is required to register as an MSP or MSBSP[929] or is a non-financial counterparty entering into SBS not for the purpose of hedging or mitigating commercial risk (or otherwise not electing the End-User Exception once adopted);[930] (iii) two non-financial counterparties entering into SBS not for the purpose of hedging or mitigating commercial risk (or otherwise not electing the End-User Exception once adopted).[931] Activities in SBS without the jurisdiction of the US are not subject to Dodd-Frank, unless in contravention of SEC anti-evasion rules.[932] The SEC has published a release in this respect (Release No.34-	The parties subject to the clearing obligation do not differ substantially, but in order to understand the actual scope of application of the clearing obligation a careful consideration should be given to the exemptions analysed below (see also separate section on Non-financials).

Description of the EMIR provisions on OTC derivatives	Description of the corresponding CFTC provisions	Description of the corresponding SEC provisions	Assessment of Equivalence
		69490 http://www.sec.gov/rules/proposed/2013/34-69490.pdf) .	
Intragroup transaction exemption. OTC derivative contracts that are Intragroup Transactions (as defined below) are not subject to the Clearing Obligation (the "Clearing Obligation Intragroup Transaction Exemption"), without prejudice to the Risk-Mitigation Techniques Obligations.	***Inter-affiliate Swaps***. The CFTC has released a final rule allowing certain counterparties to elect an exemption from mandatory clearing for swaps between affiliates (the "Inter-Affiliate Clearing Exemption").[933]	***Inter-affiliate Swaps***. The SEC has not yet released any rules for an inter-affiliate exception yet.	The application of the intragroup exemptions is broadly equivalent between the EU and the CFTC. Both exemptions apply a similar principle according to which the exemption can be granted if both parties of the intragroup transaction are subject to the clearing obligation or risk mitigation techniques.

Description of the EMIR provisions on OTC derivatives	Description of the corresponding CFTC provisions	Description of the corresponding SEC provisions	Assessment of Equivalence
Definition of intragroup transactions (the "Intragroup Transactions"). *In relation to a non-financial counterparty:* an Intragroup Transaction is an OTC derivative contract entered into with another counterparty which is part of the same group provided that (i) both counterparties are included in the same consolidation on a full basis and they are subject to appropriate centralized risk evaluation, measurement and control procedures; and (ii) that counterparty is established in the Union or in a third country that the Commission declared equivalent for the purposes of the Clearing Obligation, the Reporting Obligation and the Risk-Mitigation techniques obligations (a "Recognized Third Country"). *In relation to a financial counterparty:* an Intragroup Transaction is: (a) an OTC derivative contract entered into with another counterparty which is part of the same group, provided that: (i) the financial counterparty is established in the Union or in a Recognized Third Country; (ii) the other counterparty is a financial counterparty, a financial holding company, a financial institution or an ancillary services undertaking subject to appropriate prudential requirements; (iii) both counterparties	*Definition of Inter-Affiliate Clearing Exemption*[934] The Inter-Affiliate Clearing Exemption applies if: (a) Two affiliates within the same corporate group each elect to make use of the exemption and not submit an inter-affiliate swap for clearing. Eligible affiliate counterparties to a swap may elect the exemption if: (b) Two affiliates within the same corporate group each elect to make use of the exemption and not submit an inter-affiliate swap for clearing. (c) Each affiliate meets any of the following: (1) it is located in the U.S; (2) it is located in a non-US jurisdiction that has a comparable and comprehensive clearing requirement; (3) it is required to clear swaps with non-affiliates; The affiliated counterparties must also meet certain conditions, including: (1) The swap is subject to a centralized risk management program that is reasonably designed to monitor and manage the risks associated with the swap. and		In the EU there is the presumption that if an intragroup transaction is concluded with a counterparty in an equivalent third country, such transactions will either be cleared or subject to risk mitigation techniques. In the US there is a requirement that that once a swap is concluded outside the group, it must be cleared. A foreign exemptions might be a recognised if comparable to the US exemption.

Description of the EMIR provisions on OTC derivatives	Description of the corresponding CFTC provisions	Description of the corresponding SEC provisions	Assessment of Equivalence
are included in the same consolidation on a full basis; and (iv) both counterparties are subject to appropriate centralized risk evaluation, measurement and control procedures; or (b) an OTC derivative contract entered into with another counterparty where both counterparties are part of the same institutional protection scheme (as referred to in Directive 2006/48, Art. 80(8)) and the other counterparty is a financial counterparty, a financial holding company, a financial institution or an ancillary services undertaking subject to appropriate prudential requirements; or (c) an OTC derivative contract entered into between credit institutions affiliated to the same central body or between such credit institution and the central body (as referred to in Directive 2006/48, Art. 3(1)); or (d) an OTC derivative contract entered into with a non-financial counterparty which is part of the same group provided that (i) both counterparties are included in the same consolidation on a full basis, (ii) they are subject to appropriate centralized risk evaluation, measurement and control procedures and (iii) that counterparty	(2) (i) Each eligible affiliate counterparty that enters into a swap, which is subject to the clearing obligation, with an unaffiliated counterparty shall: (A) comply with the Commodity Exchange Act and CFTC regulations; (B) comply with the requirements for clearing the swap under a foreign jurisdiction's clearing mandate that is comparable to, and as comprehensive as, the clearing requirement in the US; (C) comply with an exception or exemption; (D) comply with an exception or exemption under a foreign jurisdiction's clearing mandate, provided that (1) the foreign jurisdiction's clearing mandate is comparable to, and as comprehensive as, the clearing requirement in the US; and (2) the foreign jurisdiction's exception or exemption is comparable to an exception or exemption in the US; or (E) clear such swap through a registered DCO or a clearing organization that is subject to supervision by appropriate government authorities in the home country of the clearing organization and has been assessed to be in compliance with the Principle for Financial Market Infrastructures.		

Description of the EMIR provisions on OTC derivatives	Description of the corresponding CFTC provisions	Description of the corresponding SEC provisions	Assessment of Equivalence
is established in the Union or in a Recognized Third Country.			
Scope of the Clearing Obligation Intragroup Transaction Exemption. The Clearing Obligation Intragroup Transaction Exemption applies only: (a) where two counterparties established in the Union belonging to the same group have first notified their respective Competent Authorities in writing that they intend to make use of the Clearing Obligation Intragroup Transaction Exemption for the OTC derivative contracts concluded between each other. Such notification must be made not less than 30 calendar days before the use of the Clearing Obligation Intragroup Transaction Exemption. Within 30 calendar days after receipt of that notification, the Competent Authorities may object to the use of the Clearing Obligation Intragroup Transaction Exemption if the relevant transactions do not qualify as Intragroup Transactions. The relevant Competent Authorities may also object to the use of the Clearing Obligation Intragroup Transaction Exemption after the aforementioned 30-day period has expired if the relevant transactions no longer qualify as Intragroup Transactions; and to OTC derivative contracts between two counterparties belonging to the same group	*Scope of the Inter-Affiliate Clearing Exemption.* When the inter-affiliate exemption is elected, the reporting counterparty shall provide or cause to be provided the following information to a registered swap data repository: (1) Confirmation that both eligible affiliate counterparties to the swap are electing not to clear the swap and that each of the electing eligible affiliate counterparties satisfies the requirements in paragraph (b) of this section applicable to it; (2) For each electing eligible affiliate counterparty, how the counterparty generally meets its financial obligations associated with entering into non-cleared swaps by identifying one or more of the following categories, as applicable: (i) A written credit support agreement; (ii) Pledged or segregated assets (including posting or receiving margin pursuant to a credit support agreement or otherwise); (iii) A written guarantee from another party; (iv) The electing counterparty's available financial resources; or		

Description of the EMIR provisions on OTC derivatives	Description of the corresponding CFTC provisions	Description of the corresponding SEC provisions	Assessment of Equivalence
which are established in a Member State and in a third country, where the counterparty established in the Union has been authorized to apply the Clearing Obligation Intragroup Transaction Exemption by its Competent Authority in accordance with the procedure set forth in (a) above, provided that the relevant transactions qualify as Intragroup Transactions. The Competent Authority must notify ESMA of that decision.	(v) Means other than those described in paragraphs (i), (ii), (iii) or (iv); and (3) If an electing eligible affiliate counterparty is an entity that is an issuer of securities: (i) The relevant SEC Central Index Key number for that counterparty; and (ii) Acknowledgment that an appropriate committee of the board of directors (or equivalent body) of the eligible affiliate counterparty has reviewed and approved the decision not to clear the swap.		
	Small bank exemption The following entities are considered financial entities (see CEA § 2(h)(7)(C)): (a) SDs, SBSDs, MSPs, MSBSPs, (b) commodity pools, (c) certain private investment funds, (d) certain employee benefit plans, and (e) persons predominantly engaged in activities that are in the business of banking or in activities that are financial in nature. The CFTC considers the following to be non-financial entities for this purpose: (a) qualifying captive finance companies (CEA § 2(h)(7)(C)(iii)), (b) qualifying affiliates of non-financial entities (CEA 2(h)(7)(D)), and (c) small banks and similar financial institutions with $10 billion or less in total	The SEC considered whether to exempt small banks, savings associations, farm credit system institutions and credit unions from the definition of "financial entity" contained in Exchange Act Section 3C(g)(3)(A) The SEC proposed alternative text to provide an exemption for such entities. See Release No. 34-63556 available at http://www.sec.gov/rules/proposed/2010/34-63556.pdf	The absence of a small bank exemption in the EU would result in a gap, i.e. the scope of application of the EU clearing obligation is broader.

Description of the EMIR provisions on OTC derivatives	Description of the corresponding CFTC provisions	Description of the corresponding SEC provisions	Assessment of Equivalence
	assets (17 C.F.R. § 39.6(d)). To make use of the End-User Exception, a counterparty that qualifies must make an election to use the exception, and must report to a registered swap data repository (or, if none, to the CFTC) certain information, including as necessary: (i) notice of the election of the exception; (2) the identity of the electing counterparty; (iii) whether the electing counterparty is a financial entity, is using the swap to hedge or mitigate risk and how it generally meets its financial obligations associated with entering into non-cleared swaps; and (iv) if the electing party is registered or required to file reports with the SEC, that an appropriate committee of the board or equivalent governing body reviewed and approved the decision to enter into swaps exempt from the clearing requirement and its SEC identifier (this information can be provided on an annual basis under certain conditions). 17 C.F.R. § 39.6.		

Description of the EMIR provisions on OTC derivatives	Description of the corresponding CFTC provisions	Description of the corresponding SEC provisions	Assessment of Equivalence
Pension funds Exemption For three years after the entry into force of EMIR the clearing obligation shall not apply to OTC derivatives that are objectively measurable as reducing investment risks directly relating to the financial solvency of pension scheme arrangements.	***Pension funds Exemption*** Not envisaged	***Pension funds Exemption*** Not envisaged	The absence of a pension fund exemption is not considered to impact the equivalence assessment, given the broader application of the clearing obligation in absence of such an exemption.
Exception for Sovereigns • EMIR does not apply to EU central banks or public debt management bodies or the Bank of International Settlements. • EMIR does not apply (with the exception of the reporting obligation) to multilateral development banks, public sector entities owned and guaranteed by central governments and the EU stability mechanism (EFSF and ESM).	***Exception for Sovereigns.*** The US Federal government, a US Federal Reserve Bank, a US Federal agency that is expressly backed by the full faith and credit of the US, a foreign government, a foreign central bank or a specified international financial institution (but not sovereign wealth funds or similar entities) are excluded from mandatory clearing.[935]		The exemptions from the clearing obligation for sovereigns and central banks can be considered broadly equivalent.
Procedure for applying the clearing obligation Bottom-up approach: the competent authority authorising a CCP to clear a class of OTC derivatives shall immediately notify ESMA. The notification shall include: (a) the identification of the class of OTC derivative contracts; (b) the identification of the OTC derivative contracts within the class of OTC	***Procedure for applying the clearing obligation*** DCO-Initiated Review: Submission from a DCO of each swap, or any group, category, type or class of swaps, that the DCO plans to accept for clearing at least one business day prior to acceptance for clearing.[936] As part of its submission the DCO must include: (a) A list of product specifications, copies	***Procedure for applying the clearing obligation*** Clearing Agency-Initiated Review: Submission from a clearing agency of any SBS, or any group, category, type or class of SBS that the clearing agency plans to accept for clearing. As part of its submission, the clearing agency must include information including, but not limited to:	Although Article 5 of EMIR is not included in the equivalent assessment to be performed under Article 13, in order to assess the overall equivalence of the clearing obligation, all the aspects of it should be considered, including the process for determining the classes of derivatives subject to the clearing obligation.

Description of the EMIR provisions on OTC derivatives	Description of the corresponding CFTC provisions	Description of the corresponding SEC provisions	Assessment of Equivalence
derivative contracts; (c) the other information to be included in the public register in accordance with Article 7; (d) any further characteristics necessary to distinguish OTC derivative contracts within the class of OTC derivative contracts from OTC derivative contracts outside that class; (e) evidence of the degree of standardisation of the contractual terms and operational processes for the relevant class of OTC derivative contracts; (f) data on the volume and liquidity of the class of OTC derivative contracts such data must contain, for the class of OTC derivative contracts and for each derivative contract within the class, the relevant market information, including historical data, current data as well as any change that is expected to arise if the class of OTC derivative contracts becomes subject to the Clearing Obligation, including: (i) the number of transactions; (ii) the total volume; (iii) the total open interest; (iv) the depth of orders, including the average number of orders and of requests for quotes; (v) the tightness of spreads; (vi) the measures of liquidity	of standard legal documentation, generally accepted contract terms, standard practices for managing life cycle events with respect to the swap and the extent to which the swap is electronically confirmable; (b) Evidence of the existence of significant outstanding notional exposures, trading liquidity and adequate pricing data; (c) Evidence of pricing sources, models and procedures, demonstrating an ability to obtain sufficient price data to measure credit exposures in a timely and accurate manner. The DCO also should include any agreements with participants to provide pricing data or agreements with third-party price vendors, and information about any price reference index used (name, source that calculates it, methodology used to calculate the price reference index, how often it is calculated, when/where it is published); (d) Information that will help the CFTC make an assessment of the resources of the DCO available to clear the contract and the effect on the mitigation of systemic risk, taking into account the size of the market for such contracts;	(a) the existence of significant outstanding notional exposures and trading liquidity. (b) Information that evidences the existence of adequate pricing data for that class of SBS. (c) Evidence of the availability of a rule framework, capacity, operational expertise and resources and credit support infrastructure to clear the contract on terms that are consistent with the material terms and trading conventions on which the contact is then traded. (d) Information providing evidence on the effect on the mitigation of systemic risk of clearing the SBS contract, taking into account the size of the market for such contract and the resources of the clearing agency available to clear the contract. (e) A statement how the submission is consistent with other regulatory requirements; (f) The effect on competition, including appropriate fees and charges applied to clearing. (g) The existence of reasonable legal certainty in the event of the insolvency of the relevant clearing agency or	Both the EU and the US envisage a bottom-up and a top-down approach. Both the EU and the US envisage a public consultation before the determination of a clearing obligation. The elements to be assessed for the determination of the clearing obligation are similar in the EU and in the US. In the EU the contracts becomes potentially subject to the clearing obligation following the start of the clearing obligation determination (i.e. following the notification). Therefore all contracts concluded after the notification of the competent authority are potentially subject to the clearing obligation. In the US the contracts subject to the clearing obligation are only those concluded after the clearing obligation determination.

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under stressed market conditions; and (vii) the measures of liquidity for the execution of default procedures.; (g) evidence of availability to market clearing members of fair, reliable and generally accepted pricing information for contracts in the class of OTC derivative contracts; (h) evidence of the impact of the clearing obligation on availability to market clearing members of pricing information. (i) data relevant for assessing the expected volume of the class of OTC derivative contracts if it becomes subject to the clearing obligation; (j) evidence of the ability of the CCP to handle the expected volume of the class of OTC derivative contracts if it becomes subject to the clearing obligation and to manage the risk arising from the clearing of the relevant class of OTC derivative contracts, including through client or indirect client clearing arrangements; (k) the type and number of counterparties active and expected to be active within the market for the class of OTC derivative contracts if it becomes subject to the clearing obligation; (l) an outline of the different tasks to be	(e) Evidence of the availability of a rule framework, capacity, operational expertise and resources and credit support infrastructure to clear the contract on terms that are consistent with the material terms and trading conventions on which the contract is then traded; (f) Evidence of risk management procedures, including measurement and monitoring of credit exposures, initial and variation margin methodology, methodologies for stress testing and back testing, settlement procedures and default management procedures; (g) A statement that if the CFTC were to determine that type of swap is required to be cleared, the DCO will be able to maintain compliance with regulatory standards, including adequate financial resources and risk management capabilities; (h) A statement describing the effect on competition, including appropriate fees and charges applied to clearing; (i) Evidence of the existence of reasonable legal certainty of the treatment of customer and swap counterparty positions, funds and property in the event of the insolvency of the DCO or a participant;	one or more of its clearing members with regard to the treatment of customer and SBS counterparty positions, funds and property. (h) A statement regarding how the clearing agency's rules prescribe that all SBSs submitted to the clearing agency with the same terms and conditions are economically equivalent within the clearing agency and may be offset with each other within the clearing agency and provide for non-discrimination between bilaterally executed swaps and swaps executed on a securities exchange or swap execution facility. The SEC will publish notice of a clearing agency's submission in the Federal Register for a no less than 30-day public comment period.[939] The SEC, after receiving the submission, will make a determination as to whether the SBS, group, category, type or class of SBS described in the submission should be required to be cleared. The SEC will make its determination within 90 days of receiving a complete submission and has sole discretion in making the determination as well as imposing any terms and conditions to the clearing requirement as it determines	

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completed in order to start clearing with the CCP, together with the determination of the time required to fulfil each task; (m) information on the risk management, legal and operational capacity of the range of counterparties active in the market for the class of OTC derivative contracts if it becomes subject to the clearing obligation. Within 6 months of receiving the notification, ESMA must issue draft regulatory technical standards, for adoption by the Commission, specifying: (i) the class of OTC derivatives that should be subject to the Clearing Obligation; (ii) the date or dates from which the Clearing Obligation takes effect (the "Clearing Obligation Effective Date"), including any phase-in and the categories of counterparties to which the Clearing Obligation applies; and (iii) the minimum remaining maturity (the "Minimum Remaining Maturity") of the OTC derivative contracts entered into or novated after the	(j) A statement of participant eligibility standards; (k) Applicable rules, manuals, policies or procedures; and (l) A description of how the DCO has provided notice of the submission to its members and a summary of any views expressed by its members on the submission. The CFTC will make the DCO's submission available for public comment for 30 days.[937] The CFTC, after receiving the submission, will make a determination as to whether the swap, group, category, type or class of swaps described in the submission should be required to be cleared. The CFTC will make its determination within 90 days of receiving a complete submission and has sole discretion in making the determination as well as imposing any terms and conditions to the clearing requirement as it determines to be appropriate.[938] Swaps entered into before a Clearing Requirement Determination date are exempt from mandatory clearing if properly reported to a swap data repository ("SDR").	to be appropriate. [940] SBSs entered into before a Clearing Requirement Determination date are exempt from mandatory clearing if they are reported to a security-based swap data repository (SBRD).[941]	

Description of the EMIR provisions on OTC derivatives	Description of the corresponding CFTC provisions	Description of the corresponding SEC provisions	Assessment of Equivalence
notification, which, despite being entered into before the Clearing Obligation Effective Date, shall be subject to the Clearing Obligation.			

Description of the EMIR provisions on OTC derivatives	Description of the corresponding CFTC provisions	Description of the corresponding SEC provisions	Assessment of Equivalence
Top-down approach. ESMA must, on its own initiative, identify and notify to the Commission the classes of OTC derivatives that meet the criteria to be subject to the Clearing Obligation, but for which no CCP has yet received an authorization. Following such notification, ESMA must publish a call for a development of proposals for the clearing of those classes of OTC derivatives. No CCP, however, shall be forced to clear contracts that it is not able to manage and the Clearing Obligation will actually enter into force only following the bottom-up approach described above. If a class of OTC derivative contracts no longer has a CCP which is authorized or recognized to clear those contracts under EMIR, it will cease to be subject to the Clearing Obligation.	CFTC-initiated review.[942] On an on-going basis, the CFTC will review swaps that DCOs have not accepted for clearing and make determinations as to whether the swaps should be required to be cleared. The CFTC can base its determination on information obtained from swap data repositories ("SDRs"), SDs, MSPs and any other available information. If the CFTC does make such a determination, it will notify the public and post its determination on its website for a 30-day public comment period. If no DCO accepts for clearing the types of swaps in the CFTC's Clearing Requirement Determination, the CFTC is to investigate and within 30 days after completing its investigation publish a report of the results of its investigation. In addition, the CFTC must take such actions as it determines necessary in the public interest, including setting margin or capital requirements for parties engaging in such swaps.	SEC-Initiated Review.[943] On an on-going basis, the SEC will review SBSs or any group, category, type or class of SBS and make determinations as to whether the SBSs should be required to be cleared. The SEC noted it is not required to issue rules for SEC-initiated reviews and requested comment on whether, in the context of such a review, it should consider information that is different from what it has proposed to require clearing agencies to include in their submissions.[944] The SEC has not proposed any rules on SEC-initiated reviews to date. If no clearing agency accepts for clearing the types of SBS in the SEC's Clearing Requirement Determination, the SEC will investigate and within 30 days after completing its investigation publish a report of the results of its investigation. In addition, the SEC will take such actions as it determines necessary in the public interest, including setting margin or capital requirements for parties engaging in such SBS.[945]	
Arrangements to clear Principle. The OTC derivative contracts that are subject to the Clearing Obligation	***Arrangements to clear*** Principle: A swap subject to a Clearing Requirement Determination, and not	***Arrangements to clear*** Principle: An SBS subject to a Clearing Requirement Determination, and not	**Broadly equivalent** Both the EU and the CFTC allow clearing to take place directly (i.e. as

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must be cleared in a CCP established in a Member State that is authorized by its CCPs Competent Authority (or in a CCP established in a third country that is recognized by ESMA) to clear that class of OTC derivatives. For purposes of the Clearing Obligation, a counterparty must: (a) become a Clearing Member of a CCP authorized or recognized to clear the contracts covered by the Clearing Obligation; or (b) become a Client of a Clearing Member ("Direct Clearing Arrangements"); or (c) establish an indirect clearing arrangement, provided that those arrangements do not increase counterparty risk and ensure that the assets and positions of the counterparty (i.e., the Indirect Client) benefit from protection with equivalent effect to the client segregation and portability requirements and default procedures in EMIR.	falling within an exemption or exclusion from mandatory clearing, must be cleared in a DCO that is registered with the CFTC or exempt from registration under the CEA.[946] The CFTC has the authority to exempt from registration a DCO that it determines is subject to comparable, comprehensive supervision in the home country of its authorization. Direct clearing arrangement: A counterparty can satisfy the requirement to clear swaps subject to a Clearing Requirement Determination by becoming: • A clearing member of a DCO; or • A customer of an FCM that is a clearing member of the DCO. Depositing and Collecting FCMs: A counterparty can satisfy the clearing obligation by being a customer of an FCM that is not itself a clearing member of the DCO but that has a relationship with another FCM that is a clearing member. The FCM directly interacting with the customer is referred to as the Depositing FCM[947] and the clearing member FCM is referred to as the Collecting FCM.[948] Generally, as a matter of practice, a Collecting FCM is responsible to a Depositing FCM for the rights and obligations with regards to a particular swap for the customers of the Depositing	falling within an exemption or exclusion from mandatory clearing, must be submitted for clearing in a clearing agency that is registered with the SEC or exempt from registration under the Exchange Act.[949] The SEC has the authority to exempt from registration a SBS clearing agency that it determines is subject to comparable, comprehensive supervision and regulation in the home country of the SBS clearing agency. Direct clearing arrangement: A counterparty can satisfy the requirement to clear SBS subject to a Clearing Requirement Determination by becoming: • A clearing member of a clearing agency;[950] or • A customer of a broker-dealer that is a clearing member of the clearing agency. The SEC has not proposed specific rules regarding indirect clearing arrangements.	clearing member or direct client of a clearing member) or indirectly, i.e. with a client of a clearing member. The SEC has not proposed rules on indirect clearing. Both the EU and the US allow for clearing to take place in an authorised/registered or recognised/exempted CCP.

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	FCM.		
B. Non-financial counterparties (Article 10)			

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Treatment of non-financial counterparties. Non-financial counterparties are subject to the clearing obligation if the rolling average position over 30 days exceeds the clearing threshold. The clearing threshold is calculated excluding the hedging positions and in terms of gross notional value: 1 bn for credit and equity OTC derivatives; 3 bn for	***End-User Exception for non-financial counterparties.*** A non-financial entity is subject to the Clearing Requirement Determination if either: (i) its exposure to swaps exceeds the MSP or MSBSP threshold and it is an MSP[20] or MSBSP; or (ii) it is entering into a swap for a purpose other than hedging or mitigating commercial risk.	***End-User Exception for non-financial counterparties***.[951] A non-financial entity is subject to the Clearing Requirement Determination if either: (i) its exposure to swaps exceeds the MSP or MSBSP threshold[21] and it is an MSP or MSBSP;[952] or (ii) it is entering into a swap for a purpose other than hedging or	The treatment of non-financial counterparties differs. In the EU non-hedging transactions are exempted from the clearing obligation to the extent that they are below the clearing threshold. In the US non-hedging transactions are always subject to the clearing obligation. In the EU once a non-financial exceed the clearing threshold all its future OTC derivatives transactions will be subject

[20] An entity will be considered an MSP if its exposure to certain categories of swaps is as follows:

(a) It has a daily average current uncollateralized exposure of at least:
  (1) $1 billion for either equity, credit or other commodity swaps; or
  (2) $3 billion for rate swaps; or

(b) It has a daily average current uncollateralized exposure plus potential future exposure of at least:
  (1) $2 billion for either equity, credit or other commodity swaps; or
  (2) $6 billion for rate swaps;

An entity will also be considered an MSP if its total outstanding swap exposure (without regard to a particular category of swap) is as follows: If the entity has daily average current uncollateralized swap exposure of $5 billion or more; or if the entity has daily average current uncollateralized exposure plus potential future exposure of $8 billion or more.

[21] A person that is not otherwise a financial entity and is not registered as an MSP or MSBSP, but whose SBS in a fiscal quarter meet the criteria to be an MSP or MSBSP:

(a) Will be considered an MSP or MSBSP on the earlier of: (1) when the entity submits an application to the CFTC or SEC to register as an MSP or MSBSP and (2) two months after that fiscal quarter.

(b) Will be considered a financial entity when they become an MSP or MSBSP and will therefore not be able to elect to use the End-User Exception, once adopted.

(c) Will have to comply with all Clearing Requirement Determinations once it is considered an MSP or MSBSP unless the MSP or MSBSP applies to and receives from the CFTC or SEC a designation limiting its status as an MSP or MSBSP to certain categories of swaps or SBS.

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interest rate, fx, commodities and other OTC derivatives.	Otherwise, non-financial counterparties may elect the End-User Exception to the mandatory clearing requirement.	mitigating commercial risk.[953] Otherwise, non-financial counterparties may elect the End-User Exception to the mandatory clearing requirement once adopted.[954] In order to use the end-user exception, the non-financial entity also must notify the SEC as to how it generally meets its financial obligations associated with entering into non-centrally cleared SBS.	to the clearing obligation, i.e. both hedging and non-hedging. In the US, hedging transaction of non-financial entities may qualify for the exception to the clearing obligation.
Hedging Activity. ***Principle***. When assessing whether its positions in OTC derivative contracts exceed the Clearing Threshold, a non-financial counterparty must include all the OTC derivative contracts entered into by it or by other non-financial entities within its group that are not Hedging Contracts (as defined below).[955]	***Hedging Activity.*** ***Principle***. For purposes of calculating its swap exposure for the MSP definition, an entity has to include all positions in major swap categories excluding in the case of the swap category thresholds those swaps that are entered into for the purpose of hedging or mitigating commercial risk. Additionally, to elect the End-User Exception, the swap must be entered into for the purpose of hedging or mitigating commercial risk.	***Hedging Activity.*** ***Principle***. For purposes of calculating its SBS exposure for the MSBSP definition, an entity has to include all positions in major SBS categories excluding in the case of the SBS category thresholds those SBS that are entered into for the purpose of hedging or mitigating commercial risk.[956] Additionally, under the proposed rules, to elect the End-User Exception, the SBS must be entered into for the purpose of hedging or mitigating commercial risk.[957]	The definition of hedging activity is consistent, although its application, as mentioned above is different.
Definition of Hedging Contracts. An OTC derivative contract is objectively measurable as reducing risks directly relating to the commercial activity or treasury financing activity of the non-	*Definition of Hedging and Mitigating Commercial Risk*: A swap hedges or mitigates commercial risk if it is (1) (a) economically appropriate to reduce certain risks in the conduct and	*Definition of Hedging and Mitigating Commercial Risk*: An SBS hedges or mitigates commercial risk if it is (1) economically appropriate to reduce certain risks in the conduct	

Description of the EMIR provisions on OTC derivatives	Description of the corresponding CFTC provisions	Description of the corresponding SEC provisions	Assessment of Equivalence
financial counterparty or of that group, when, whether by itself or in combination with other derivative contracts, and whether directly or through closely correlated instruments, it meets one of the following conditions: b) it covers the risks arising from the potential change in the value of assets, services, inputs, products, commodities or liabilities that the non-financial counterparty or its group owns, produces, manufactures, processes, provides, purchases, leases, sells or incurs or reasonably anticipates owning, producing, manufacturing, processing, providing, purchasing, merchandising, leasing, selling or incurring in the normal course of its business; c) it covers the risks arising from the potential indirect impact on the value of assets, services, inputs, products, commodities or liabilities referred to in subparagraph (a), resulting from fluctuation of interest rates, inflation rates, foreign exchange rates or credit risk; d) it qualifies as a hedging contract pursuant to International Financial Reporting Standards (IFRS) adopted in accordance with Article 3 of Regulation (EC) No 1606/2002.	management of a commercial enterprise or (b) meets specified requirements under the CEA or accounting standards for hedges and (2) not held for a purpose that is in the nature of speculation, investing or trading or not held to hedge or mitigate the risk of another swap or security-based swap position, unless that other position itself is held for the purpose of hedging or mitigating commercial risk.[958] To qualify as "hedging or mitigating commercial risk," a swap must be economically appropriate to the reduction of risks in the conduct and management of a commercial enterprise, where the risks arise from: (a) The potential change in the value of (i) assets that a person owns, produces, manufactures, processes, or merchandises or reasonably anticipates owning, producing, manufacturing, processing, or merchandising in the ordinary course of business of the enterprise; (ii) liabilities that a person has incurred or reasonably anticipates incurring in the ordinary course of business of the enterprise; (iii) services that a person provides, purchases, or reasonably anticipates providing or purchasing in the ordinary course of business of the enterprise; or (iv) assets, services, inputs,	and management of a commercial enterprise and (2) not held for a purpose that is in the nature of speculation or trading and not held to hedge or mitigate the risk of another SBS position or swap position, unless that other position itself is held for the purpose of hedging or mitigating commercial risk.[963] To qualify as "hedging or mitigating commercial risk," an SBS must be economically appropriate to the reduction of risks in the conduct and management of a commercial enterprise, where the risks arise from the potential change in the value of (i) assets that a person owns, produces, manufactures, processes, or merchandises or reasonably anticipates owning, producing, manufacturing, processing, or merchandising in the ordinary course of business of the enterprise; (ii) liabilities that a person has incurred or reasonably anticipates incurring in the ordinary course of business of the enterprise; or (iii) services that a person provides, purchases, or reasonably anticipates providing or purchasing in the ordinary course of business of the enterprise.[964] An SBS also qualifies as "hedging or mitigating commercial risk" if, based on the facts and circumstances of the	

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- Macro or portfolio hedging contracts may qualify as Hedging Contracts if they meet the criteria of the definition of Hedging Contracts; - OTC derivatives offsetting Hedging Contracts may also qualify as Hedging Contracts; - OTC derivative contracts related to employee benefits such as stock options may be considered in the scope of Hedging Contracts; - OTC derivative contracts reducing risks relating to the acquisition of a company by a non-financial counterparty may be considered in the scope of Hedging Contracts; - OTC derivative contracts related to credit risk fall within the scope of Hedging Contracts.	products, or commodities that a person owns, produces, manufactures, processes, merchandises, leases, or sells, or reasonably anticipates owning, producing, manufacturing, processing, merchandising, leasing, or selling in the ordinary course of business of the enterprise;[959] or (b) Any potential change in value related to any of the foregoing arising from interest, currency, or foreign exchange rate movements associated with such assets, liabilities, services, inputs, products or commodities or anticipated assets, liabilities, services, inputs, products or commodities;960 or (c) Any fluctuation in interest, currency, or foreign exchange rate exposures arising from a person's current or anticipated assets or liabilities. Alternatively, a swap may qualify as "hedging or mitigating commercial risk" if it qualifies for hedging treatment under FASB ASC 815 or GASB Statement 53. - Swaps that facilitate portfolio hedging can qualify as hedging or mitigating commercial risk if they otherwise satisfy the applicable requirements.[961] - Swaps hedging another swap position that is itself hedging or mitigating	transaction, it manages the default risk posed by customers, suppliers or counterparties in specific transactions, or financial counterparties to transactions that could also include other swaps or SBS themselves hedging or mitigating commercial risk.[965] In addition, to be economically appropriate, the SBS cannot materially overhedge the underlying risk such that it would have a speculative effect.[966] An SBS also qualifies as "hedging or mitigating commercial risk" if, based on the facts and circumstances of the transaction, it manages the default risk posed by customers, suppliers or counterparties in specific transactions, or financial counterparties to transactions that could also include other swaps or SBS themselves hedging or mitigating commercial risk.[967] The SEC's proposed rules requested comment on whether SBS that are part of a portfolio hedging strategy are	

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	commercial risk may also qualify as hedging or mitigating commercial risk.[962]	considered hedging contracts.[968] SBS hedging another SBS position that is itself hedging or mitigating commercial risk may also qualify as hedging or mitigating commercial risk;[969] SBS established to manage equity or market risk associated with certain employee benefit plans are considered hedging contracts;[970] SBS established to manage equity price risks connected with certain business combinations are considered hedging contracts;[971] SBS established to manage credit risk of customers, suppliers or counterparties related to, for example, financing or leasing a good, product or service[972] or default risk posed by a financial counter-party in certain cases[973] are considered hedging contracts.	
C. Timely Confirmation (Article 11(1)(a)			
Confirmation means the documentation of the agreement of the counterparties to all the terms of an OTC derivative contract. Such documentation may refer to one or more master agreements, master confirmation agreements, or other	*Confirmation* means the consummation (electronically or otherwise) of legally binding documentation (electronic or otherwise) that memorializes the agreement of the counterparties to all of the terms of a swap transaction. A	The following SEC provisions are proposed rules • *Confirmation* means a trade acknowledgment that has been subject to verification.[976]	The definition between the EU and the CFTC regime is broadly equivalent. Under the SEC proposed rules, the main difference is that EU Rules require that the confirmation document all the terms

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standard terms. It may take the form of an electronically executed contract or a document signed by both counterparties.	confirmation must be in writing (electronic or otherwise) and must legally supersede any previous agreement (electronically or otherwise). A confirmation is created when an acknowledgment is manually, electronically, or by some other legally equivalent means, signed by the receiving counterparty.[974] *Execution* means, with respect to a swap transaction, an agreement by the counterparties (whether orally, in writing, electronically, or otherwise) to the terms of the swap transaction that legally binds the counterparties to such terms under applicable law.[975]	• *Trade acknowledgment* means a written or electronic record of a SBS transaction sent by one party to the other.[977] • *Verification* means the process by which a trade acknowledgment has been manually electronically, or by some other legally equivalent means, signed by the receiving counterparty.[978] • *Execution means the point at which the parties become irrevocably bound to a transaction.*[979]	of a swap transaction, while the SEC Rules require that the confirmation contain a minimum of 22 items of information as outlined in the rules.

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OTC derivative contracts entered into between financial counterparties or Non-Financial Counterparties above the clearing threshold must be confirmed, where available via electronic means, as soon as possible and at the latest as follows: (a) for credit default swaps and interest rate swaps: (i) if concluded on or before February 28, 2014: by the end of the second business day following the date of execution; (ii) if concluded after February 28, 2014: by the end of the next business day following the date of execution; (b) for equity swaps, foreign exchange swaps, commodity swaps and all other derivatives: (i) if concluded on or before August 31, 2013: by the end of the third business day following the date of execution; (ii) if concluded between August 31, 2013 and August 31, 2014: by the end of the second business day following the date of execution; (iii) if concluded after August 31, 2014: by the end of the next business day following the date of	• *SDs and MSPs that are counterparties to swaps with other SDs and MSPs* must execute a confirmation for the swap transaction as soon as technologically practicable,[980] but in any event: (a) for credit swaps and interest rate swaps: (i) if executed before March 1, 2014: by the end of the second business day following the day of execution; (ii) if executed on or after March 1, 2014: by the end of the first business day following the day of execution;[981] (b) for equity swaps, foreign exchange swaps or other commodity swaps: (i) if executed before September 1, 2013: the end of the third business day following the day of execution; (ii) if executed between September 1, 2013 and August 31, 2014: the end of the second business day following the day of execution; (iii) if executed on or after September 1, 2014: the end of the first business day following the day of execution.[982]	The following SEC provisions are proposed rules • *SBSDs and MSBSPs* must provide a trade acknowledgment: (a) for any transaction that has been executed and processed electronically, within 15 minutes of execution; (b) for any transaction that is not executed electronically, but that will be processed electronically, within 30 minutes of execution; and (c) for any transaction that cannot be processed electronically, within 24 hours following execution.[983] • A transaction must be processed electronically if the SBSD or MSBSP has the ability to do so.[984] • *SBSDs and MSBSPs* must establish, maintain, and enforce written policies and procedures that are reasonably designed to obtain prompt verification of the terms of trade acknowledgments they provide.[985] • *SBSDs and MSBSPs* must promptly verify the accuracy of, or dispute with their counterparty, the terms of a trade acknowledgment that they receive.[986]	Equivalence can be considered only with CFTC rules applicable to SDs and MSPs. The personal scope of application of EU provisions is broader in all the other cases. With reference to SBSDs and MSBSPs subject to the SEC regimes, it should be noted that: 1) the rules are not final; 2) proposed rule does not specify a time in which SBSDs or MSBSPs must verify or affirm their transactions but requires that they verify the accuracy of the trade acknowledgment "promptly".

Description of the EMIR provisions on OTC derivatives	Description of the corresponding CFTC provisions	Description of the corresponding SEC provisions	Assessment of Equivalence
execution.		• Any trade acknowledgment must be provided through electronic means that provide reasonable assurance of delivery and a record of transmittal.[987] • In any transaction in which a SBSD or MSBSP purchases from or sells to any counterparty a SBS, a trade acknowledgment must be provided by: (a) The SBSD, if the transaction is between a SBSD and a MSBSP; (b) The SBSD or MSBSP, if only one counterparty in the transaction is a SBSD or MSBSP; or (c) The counterparty that the counterparties have agreed will provide the trade acknowledgment in any transaction other than one described in (a) or (b) above.[988]	

Description of the EMIR provisions on OTC derivatives	Description of the corresponding CFTC provisions	Description of the corresponding SEC provisions	Assessment of Equivalence
	• *SDs and MSPs that are counterparties to swaps with non-SDs and non-MSPs* must send an acknowledgment of such swap transaction as soon as technologically practicable,[989] but in any event: (a) for credit swaps and interest rate swaps: (i) if executed before March 1, 2014: by the end of the second business day following the day of execution; (ii) if executed on or after March 1, 2014: by the end of the first business day following the day of execution;[990] (b) for equity swaps, foreign exchange swaps or other commodity swaps: (i) if executed before September 1, 2013: the end of the third business day following the day of execution; (ii) if executed between September 1, 2013 and August 31, 2014: the end of the second business day following the day of execution; (iii) if executed on or after September 1, 2014: the end of the first business day following the day of execution.[991]	The same requirements apply to transactions when an SBSD or an MSBSP transacts with a non-SBSD/non-MSBSP.	

Description of the EMIR provisions on OTC derivatives	Description of the corresponding CFTC provisions	Description of the corresponding SEC provisions	Assessment of Equivalence
	• *SDs and MSPs that are counterparties to swaps with non-SDs and non-MSPs* must establish, maintain, and follow written policies and procedures that include a requirement that, upon request by a prospective counterparty prior to execution of any such swap, the SD or MSP must provide a draft acknowledgment specifying all terms of the swap other than applicable pricing and other terms expressly agreed upon at execution.[992] • *SDs and MSPs that are counterparties to swaps with Financial Entities* must establish, maintain, and follow written policies and procedures designed to ensure that they execute a confirmation for each swap transaction as soon as technologically practicable,[993] but in any event: (a) for credit swaps and interest rate swaps: (i) if executed before March 1, 2014: by the end of the second business day following the day of execution; (ii) if executed on or after March 1, 2014: by the end of the first business day following the day of execution;[994] (b) for equity swaps, foreign exchange		

Description of the EMIR provisions on OTC derivatives	Description of the corresponding CFTC provisions	Description of the corresponding SEC provisions	Assessment of Equivalence
	swaps or other commodity swaps: (i) if executed before September 1, 2013: the end of the third business day following the day of execution; (ii) if executed between September 1, 2013 and August 31, 2014: the end of the second business day following the day of execution; (iii) if executed on or after September 1, 2014: the end of the first business day following the day of execution.[995]		

Description of the EMIR provisions on OTC derivatives	Description of the corresponding CFTC provisions	Description of the corresponding SEC provisions	Assessment of Equivalence
OTC derivative contracts entered into with a non-financial counterparty below the clearing threshold must be confirmed, where available via electronic means, as soon as possible and at the latest as follows:[996] (a) for credit default swaps and interest rate swaps: (i) if concluded on or before August 31, 2013: by the end of the fifth business day following the date of execution; (ii) if concluded between August 31, 2013 and August 31, 2014: by the end of the third business day following the date of execution; (iii) if concluded after August 31, 2014: by the end of the second business day following the date of execution; (b) for equity swaps, foreign exchange swaps, commodity swaps and all other derivatives: (i) if concluded on or before August 31, 2013: by the end of the seventh business day following the date of execution; (ii) if concluded between August 31, 2013 and August 31, 2014: by the end of the fourth business day	*SDs and MSPs that are counterparties to swaps with counterparties that are not SDs, MSPs or Financial Entities* must establish, maintain, and follow written policies and procedures designed to ensure that they execute a confirmation for each swap transaction as soon as technologically practicable,[997] but in any event: (a) for credit swaps and interest rate swaps: (i) if executed before September 1, 2013: by the end of the fifth business day following the day of execution; (ii) if executed between September 1, 2013 and August 31, 2014: by the end of the third business day following the day of execution; (iii) if executed on or after September 1, 2014: by the end of the second business day following the day of execution;[998] (b) for equity swaps, foreign exchange swaps or other commodity swaps: (i) if executed before September 1, 2013: the end of the seventh business day following the day of execution; (ii) if executed between September	The SEC has proposed the following rules • SBSDs and MSBSPs must provide a trade acknowledgment in transactions with parties that are not SBSDs or MSBSPs: (a) for any transaction that has been executed and processed electronically, within 15 minutes of execution; (b) for any transaction that is not executed electronically, but that will be processed electronically, within 30 minutes of execution; and (c) for any transaction that cannot be processed electronically, within 24 hours following execution.1000 • A transaction must be processed electronically if the SBSD or MSBSP has the ability to do so.1001 SBSDs and MSBSPs must establish, maintain, and enforce written policies and procedures that are reasonably designed to obtain prompt verification of the terms of trade acknowledgments they provide.1002	**Broad equivalence with the CFTC regime** The case of non-financial below the clearing threshold can be considered similar to the case of transactions with non-SD, non-MSP or non-financial entities. In this case both the provisions and the timeline are consistent and are expected to lead to a similar result. **No equivalent regime for SEC**

Description of the EMIR provisions on OTC derivatives	Description of the corresponding CFTC provisions	Description of the corresponding SEC provisions	Assessment of Equivalence
following the date of execution; (iii) if concluded after August 31, 2014: by the end of the second business day following the date of execution.	1, 2013 and August 31, 2014: the end of the fourth business day following the day of execution; (iii) if executed on or after September 1, 2014: the end of the second business day following the day of execution.[999]		
Timing For transactions concluded after 4:00 p.m. local time, or with a counterparty located in a different time zone which does not allow confirmation by the set deadline, the confirmation must take place as soon as possible and, at the latest, one business day following the deadline set out above.	***Timing*** The "day of execution" means the calendar day of the party that ends latest. If a swap transaction is entered into after 4:00 p.m. local time in the place of a party or entered into on a day that is not a business day in the place of a party, then the swap transaction will be deemed to have been entered into by the party on the immediately succeeding business day of that party, and the day of execution must be determined with reference to such business day.[1003]	***Timing*** SBSDs and MSBSPs must provide a trade acknowledgement for (a) transaction executed and processed electronicallym, within 15 mn of execution; (b) for transaction that is not executed electronically, but that will be processed electronically, within 30 mn of execution, and (c) for transaction that cannot be processed electronically, within 24 hours following execution.	**Broad equivalence with CFTC** EU Rules and CFTC Rules both adjust deadlines for swaps executed later in the business day and on days on which a counterparty may not be able to confirm the swap (e.g., holidays). **No equivalent regime for SEC**

Description of the EMIR provisions on OTC derivatives	Description of the corresponding CFTC provisions	Description of the corresponding SEC provisions	Assessment of Equivalence
Reporting Financial counterparties must have the necessary procedure to report on a monthly basis to the relevant competent authority the number of unconfirmed OTC derivative transactions referred to above that have been outstanding for more than five business days.[1004]	***Recordkeeping***. Each SD and MSP must make and retain a record of: (a) The date and time of transmission to, or receipt from, a counterparty of any acknowledgment; and (b) The date and time of transmission to, or receipt from, a counterparty of any confirmation; and (c) all records required to be kept by a SD or MSP must be kept at the principal place of business of such SD or MSP or such other principal office as must be designated by the SD or MSP. The records required to be maintained must be kept for a period of five years from the date the record was made and must be readily accessible during the first two years of the five-year period. All such records must be open to inspection by any representative of the CFTC, the U.S. Department of Justice or any applicable prudential regulator.[1005]		**Not Equivalent** CFTC and SEC Rules do not require SDs and MSPs to report, or establish policies and procedures for reporting, unconfirmed swap transactions to the CFTC.

Description of the EMIR provisions on OTC derivatives	Description of the corresponding CFTC provisions	Description of the corresponding SEC provisions	Assessment of Equivalence
• A counterparty may delegate the performance of its confirmation obligation. However, such counterparty remains responsible for compliance with such obligation.	• A counterparty may delegate the performance of its confirmation obligation. However, such counterparty remains responsible for compliance with such obligation.[1006]	The following SEC provisions are proposed rules: • A counterparty may delegate the performance of its confirmation obligation to a clearing agency. However, such counterparty remains responsible for compliance with such obligation.[1007]	**Equivalent to CFTC regime and expected to be equivalent to the SEC regime**
D. Portfolio Reconciliation Article 11(1)(b)			
Portfolio reconciliation. Financial and non-financial counterparties to an OTC derivative contract must agree in writing or other equivalent electronic means with each of their counterparties on the terms on which portfolios shall be reconciled. Such agreement must be reached before entering into the OTC derivative contract.	*Portfolio Reconciliation*. SDs and MSPs that are counterparties to swaps with other SDs and MSPs must agree in writing on the terms on which their portfolios must be reconciled.[1008] SDs and MSPs that are counterparties to swaps with non-SDs and non-MSPs must establish, maintain and follow written procedures reasonably designed to ensure that they engage in portfolio reconciliation with such counterparties. The terms of portfolio reconciliation between an SD or MSP and a non-SD or non-MSP must be agreed in writing.[1009]		**Equivalent to the CFTC regime applicable to SDs and MSPs.** The EU Rules require all parties to agree to written terms for portfolio reconciliation; the CFTC Rules require all SDs and MSPs to agree to written terms for portfolio reconciliation with other SDs and MSPs but only requires SDs and MSPs to have policies and procedures to ensure that they agree to written procedures with counterparties that are not SDs or MSPs. The EU Rules specify that agreement regarding portfolio reconciliation must be reached before entering into swaps, while the CFTC Rules do not specify the timing of agreement regarding portfolio reconciliation.
Portfolio reconciliation must be performed by the counterparties to the OTC derivative contracts with each other, or by a qualified third party duly mandated to this effect by	The parties may agree to perform the portfolio reconciliation on a bilateral basis or by one or more third parties.[1010]		Both the EU Rules and the CFTC Rules allow portfolio reconciliation to be performed bilaterally or by a third party.

Description of the EMIR provisions on OTC derivatives	Description of the corresponding CFTC provisions	Description of the corresponding SEC provisions	Assessment of Equivalence
a counterparty.			No equivalent provision under the SEC regime
The portfolio reconciliation must cover key trade terms that identify each particular OTC derivative contract and must include at least the valuation attributed to each contract in accordance with the mark-to-market obligation.	The portfolio reconciliation must include (i) an exchange of the terms of all swaps in the swap portfolio between the counterparties, (ii) an exchange of each counterparty's valuation of each swap in the swap portfolio between the counterparties as of the close of business on the immediately preceding business day and (iii) resolution of discrepancies in the material terms and valuations of the reconciled swaps.[1011]		Both the EU Rules and the CFTC Rules require an exchange of valuations as part of portfolio reconciliation. The EU Rules require an exchange of "key trade terms" while the CFTC Rules require an exchange of "the terms of all swaps" and resolution of discrepancies in "material terms" of all reconciled swaps. No equivalent provision under the SEC regime.
In order to identify at an early stage, any discrepancy in a material term of the OTC derivative contract, including its valuation, the portfolio reconciliation must be performed within the following timeframe: (a) for a financial counterparty or a Non-Financial Counterparty above the clearing threshold: (i) each business day when the counterparties have 500 or more OTC derivative contracts outstanding with each other; (ii) once per week when the counterparties have between 51 and 499 OTC derivative contracts outstanding with each other at any	The portfolio reconciliation must be performed no less frequently than: (a) for swaps between SDs/MSPs and other SDs/MSPs: (i) each business day for each swap portfolio that includes 500 or more swaps; (ii) once each week for each swap portfolio that includes more than 50 but fewer than 500 swaps on any business day during the week; (iii) once per quarter for each swap portfolio that includes no more than 50 swaps at any time during the quarter;[1013] (b) for swaps between an SD or MSP and a counterparty that is not an SD or MSP:		The frequency with which portfolio reconciliation is required to be performed under the EU Rules for swaps between a "financial counterparty or a Non-Financial Counterparty Subject to Clearing Obligation" matches the frequency with which portfolio reconciliation is required to be performed under the CFTC Rules for swaps between SDs/MSPs and other SDs/MSPs. The frequency with which portfolio reconciliation is required to be performed under the EU Rules for swaps between a non-financial counterparty below the clearing threshold matches the frequency with

Description of the EMIR provisions on OTC derivatives	Description of the corresponding CFTC provisions	Description of the corresponding SEC provisions	Assessment of Equivalence
time during the week; (iii) once per quarter when the counterparties have 50 or less OTC derivative contracts outstanding with each other at any time during the quarter; (b) for a non-financial counterparty below the clearing threshold: (i) once per quarter when the counterparties have more than 100 OTC derivative contracts outstanding with each other at any time during the quarter; (ii) once per year when the counterparties have 100 or less OTC derivative contracts outstanding with each other.[1012]	(i) once per quarter for each swap portfolio that includes more than 100 swaps at any time during the quarter; (ii) once per year for each swap portfolio that includes no more than 100 swaps at any time during the year.[1014]		which portfolio reconciliation is required to be performed under the CFTC Rules for swaps between an SD/MSP and a counterparty that is not an SD/MSP. No equivalent provision under the SEC regime.
E. Portfolio compression 11(1)			
Portfolio compression. Financial counterparties and non-financial counterparties with 500 or more OTC derivative contracts outstanding with a counterparty which are not centrally cleared must have procedures to regularly, and at least twice a year, analyse the possibility to conduct a portfolio compression exercise in order to reduce their counterparty credit risk and engage in such a portfolio compression exercise. Financial counterparties and non-financial	*Portfolio Compression.* Each SD and MSP must establish, maintain and follow written policies and procedures for terminating each fully offsetting swap (i.e., swaps of equivalent terms where no net cash flow would be owed to either counterparty after the offset of payment obligations thereunder) that is not cleared by a DCO between it and another SD or MSP in a timely fashion, when appropriate.[1015] Each SD and MSP must establish,		**Broadly equivalent** The scope of application of the EU regime is broader. However, to the extent that the rules are applicable to SDs and MSPs they can considered broadly equivalent. No equivalent requirement under the SEC regime.

Description of the EMIR provisions on OTC derivatives	Description of the corresponding CFTC provisions	Description of the corresponding SEC provisions	Assessment of Equivalence
counterparties must ensure that they are able to provide a reasonable and valid explanation to the relevant competent authority for concluding that a portfolio compression exercise is not appropriate.	maintain and follow written policies and procedures for periodically engaging in bilateral compression exercises and multilateral compression exercises with respect to swaps that are not cleared by a DCO, when appropriate, with each other counterparty that is also an SD or MSP.[1016] Such policies and procedures with respect to multilateral compression exercises must include: (i) policies and procedures for participating in all multilateral compression exercises required by CFTC regulation or order, and (ii) evaluation of multilateral compression exercises that are initiated, offered or sponsored by any third party.[1017] Each SD and MSP must also establish, maintain and follow written policies and procedures for periodically terminating fully offsetting swaps and for engaging in portfolio compression exercises with respect to swaps that are not cleared by a DCO and for which its counterparty is neither an SD nor a MSP, to the extent requested by such counterparty.[1018]		

Description of the EMIR provisions on OTC derivatives	Description of the corresponding CFTC provisions	Description of the corresponding SEC provisions	Assessment of Equivalence
F. Dispute resolution 11(1)			
Dispute resolution. When concluding OTC derivative contracts with each other, financial counterparties and non-financial counterparties must have agreed detailed procedures and processes in relation to: (a) the identification, recording, and monitoring of disputes relating to the recognition or valuation of the contract and to the exchange of collateral between counterparties. Those procedures must at least record the length of time for which the dispute remains outstanding, the counterparty and the amount which is disputed; and (b) the resolution of disputes in a timely manner with a specific process for those disputes that are not resolved within five business days.	*Dispute Resolution.* Each SD and MSP must, as part of the portfolio reconciliation process or otherwise: (a) with respect to its swaps that are not cleared by a DCO and that are with other SDs and MSPs, establish and follow policies and procedures designed to resolve any discrepancy in a valuation identified through portfolio reconciliation or otherwise as soon as possible, but in any event within five business days; provided that the SD or MSP follows written policies and procedures for identifying how it will comply with any variation margin requirements pending resolution of the valuation discrepancy; and provided further that a difference between the lower valuation and the higher valuation of less than 10 percent of the higher valuation need not be deemed a discrepancy;[1019] (b) resolve immediately any discrepancy in a material term of a swap that is not cleared by a DCO and that is with another SD or MSP and that is identified through portfolio reconciliation or otherwise;[1020] and		**Not equivalent** The scope in the EU is broader. In the US only limited to SDs and MSPs. The CFTC Rules specify that a difference between the lower valuation and the higher valuation of less than 10 percent of the higher valuation need not be deemed a discrepancy that must be resolved through dispute resolution; the EU Rules contains no de minimis exception. The CFTC Rules require discrepancies in swaps between SDs and MSPs to be resolved within five business days and discrepancies in material terms between such counterparties to be resolved "immediately". Resolution of discrepancies involving material terms of swaps or valuations between SDs/MSPs and counterparties that are not SDs/MSPs must be resolved in a timely fashion. The EU Rules require that disputes be resolved in a timely manner regardless of the type of counterparties and that such counterparties have in place a specific process for disputes not resolved within

Description of the EMIR provisions on OTC derivatives	Description of the corresponding CFTC provisions	Description of the corresponding SEC provisions	Assessment of Equivalence
	(c) with respect to its swaps that are not cleared by a DCO and that are with counterparties that are not SDs or MSPs, establish and follow policies and procedures reasonably designed to resolve any discrepancy in the material terms of or valuation of each swap identified through portfolio reconciliation or otherwise in a timely fashion; provided that a difference between the lower valuation and the higher valuation of less than 10 percent of the higher valuation need not be deemed a discrepancy.[1021]		five business days. Neither the EU nor the US regime is more stringent and the disapplication of the EU regime might lead to a lower standard depending on the situations. No comparable rule proposed by the SEC.
Financial counterparties must report to the relevant competent authority any disputes between counterparties relating to an OTC derivative contract, its valuation or the exchange of collateral for an amount or a value higher than €15 million and outstanding for at least 15 business days. A counterparty may delegate the performance of its obligations related to dispute resolution. However, such counterparty remains responsible for compliance with such obligation.	Each SD and MSP must promptly notify the CFTC, any applicable prudential regulator, or with regard to Security-Based Swaps, the SEC, of any swap valuation dispute related to a swap that is not cleared by a DCO where such valuation dispute exceeds $20 million (or its equivalent in a foreign currency) and is not resolved within: (a) three business days, if the dispute is with an SD or MSP or (b) five business days, if the dispute is with a counterparty that is not an SD or MSP.[1022]		The reporting requirement are consistent: The EU Rules applies to financial counterparties; the CFTC Rules apply to SDs and MSPs. The EU Rules require reporting of disputes between counterparties related to valuation or the exchange of collateral for an amount or a value greater than €15 million and outstanding for at least 15 business days; the CFTC Rules require reporting of valuation disputes exceeding $20 million if not resolved within three business days (if the dispute is between SDs/MSPs) or five business days (if the dispute is between an SD/MSP and a counterparty that is not an SD/MSP).

Description of the EMIR provisions on OTC derivatives	Description of the corresponding CFTC provisions	Description of the corresponding SEC provisions	Assessment of Equivalence
			Notwithstanding the similarity of the provisions, it is not advisable to grant equivalence and dis-apply reporting requirements, otherwise the European National Competent Authorities would risk losing an important source of information.
G. Mark-to-Market and Mark-to-model Article 11(2)			
Financial counterparties and non-financial counterparties above the clearing threshold must mark-to-market on a daily basis the value of outstanding contracts, or, if market conditions prevent marking-to-market, use reliable and prudent marking-to-model.	There is no specific requirement under CFTC Rules for swaps to be marked-to-market on a daily basis, SDs and MSPs must effectively do so in a number of contexts. SDs and MSPs must report to the relevant SDR daily valuations for outstanding uncleared swaps for which they are the swap reporting counterparty. (Other reporting counterparties have less stringent valuation reporting obligations.) In addition, for uncleared swaps, an SD or MSP must provide to its counterparty (other than a counterparty who is an SD, MSP, security-based SD or security-based MSP) a daily mark. (The daily mark must be the mid-market mark of the swap, which may not include amounts for profit, credit reserve, hedging, funding, liquidity or any other costs or adjustments. The mark is to be provided as of the close of business (or such other time as the parties agree in writing) on each business day	Current SEC financial responsibility rules require that a broker-dealer calculate at the end of each business day, the amount of equity in each customer securities account, which requires to mark-to-market the positions in the account.[1025] The SEC's proposed rules would extend this requirement to non-bank SBSDs and MSBSPs. Existing SEC rules also require broker-dealers to take haircuts to its regulatory capital base on proprietary securities positions, including SBS positions, based on a daily mark-to-market value, which the proposed rules will extend. MSBSPs must maintain positive tangible net worth, and must mark-to-market the value of SBS positions at least daily.	**Not equivalent** Although there is no specific requirement under CFTC Rules for swaps to be marked-to-market on a daily basis, SDs and MSPs must effectively do so in a number of contexts. SEC Rules do not require financial entities other than SBSDs and MSBSPs to mark-to-market contracts for valuation purposes. As for other risk mitigation techniques, also in this case the personal scope of the EU regime is broader, given that the US regimes applies only to SDs, SBSDs, MSPs and MSBSPs. Given: 1) the differences in the regimes, where the EU is considered to be more stringent and detailed; 2) the possible application of the two regimes in cross-border transactions does not determine duplicative or conflicting rules to justify

Description of the EMIR provisions on OTC derivatives	Description of the corresponding CFTC provisions	Description of the corresponding SEC provisions	Assessment of Equivalence
	during the term of the swap.)[1023] CFTC Rules governing the risk management obligations of SDs and MSPs separately require SDs and MSPs to measure their market exposure daily (which would generally be done on a portfolio rather than an individual swap basis), and require that SDs and MSPs implement procedures to ensure timely payments to counterparties.[1024]	In addition, for uncleared SBS, SBSDs and MSBSPs must provide to their counterparty (other than a counterparty who is an SD, MSP, SBSD or MSBSP) a daily mark that represents the midpoint between bid and offer or a calculated equivalent.[1026]	a disapplication of the EU regime, the US regime does not appear equivalent for the purpose of mark-to-market or mark-to-model valuations.

Description of the EMIR provisions on OTC derivatives	Description of the corresponding CFTC provisions	Description of the corresponding SEC provisions	Assessment of Equivalence
Market conditions that prevent marking-to market. Market conditions prevent marking-to-market of an OTC derivative contract when: (a) the market is inactive, i.e., when quoted prices are not readily and regularly available and those prices available do not represent actual and regularly occurring market transactions on an arm's length basis. A market may be inactive for several reasons including when there are no regularly occurring market transactions on an arm's length basis; or (b) the range of reasonable fair values estimates is significant and the probabilities of the various estimates cannot reasonably be assessed.	The CFTC has noted that, when a liquid market does not exist, mid-market marks may be determined by an SD or MSP based on mark-to-model calculations.[1027] However, the CFTC has not provided further guidance as to what constitutes a non-liquid market.	For SBS that are not actively traded or do not have up-to-date bid and offer quotes, the proposed rule permits an SBSD or MSBSP to calculate an equivalent using mathematical models or quotes and prices from other comparable securities, SBS, derivatives, etc. for use in the disclosure of daily marks.[1028]	Like the EU Rules, CFTC and the SEC Rules permit the use of mark-to-model rather than mark-to-market in the absence of a liquid market. However, EU Rules provide a greater level of detail as to when conditions justify the use of mark-to-model.
Marking-to-model. For using marking-to-model, financial and non-financial counterparties shall have a model that: (a) incorporates all factors that counterparties would consider in setting a price, including using as much as possible marking-to-market information; (b) is consistent with accepted economic methodologies for pricing financial instruments;	Mid-market marks for uncleared swaps must not include amounts for profit, credit reserve, hedging, funding, liquidity or any other costs or adjustments.[1029] In addition, the SD or MSP providing the mark must disclose to the counterparty the methodology and assumptions used in the mark's preparation, but shall not be obligated to disclose any proprietary information.[1030] SDs and MSPs are subject to risk management requirements with respect to	The SEC has broad oversight authority over broker-dealers wishing to use internal models to value securities positions, including SBS positions, for purposes of meeting capital and liquidity requirements. Such firms must first apply to the SEC for model approval. The SEC willexamine the creation, design, use and management controls over its models, the methods of assessing credit, market, counterparty and other risks incorporated into the models and the backtesting procedures, among other	EU requirements are more detailed on the use of the models and their calibration.

Description of the EMIR provisions on OTC derivatives	Description of the corresponding CFTC provisions	Description of the corresponding SEC provisions	Assessment of Equivalence
(c) is calibrated and tested for validity using prices from any observable current market transactions in the same financial instrument or based on any available observable market data; (d) is validated and monitored independently, by another division than the division taking the risk; (e) is duly documented and approved by the board of directors (or a delegated committee thereof) as frequently as necessary, following any material change and at least annually. Models may be developed externally, in which case they shall still be approved as mentioned above.	the use of models for valuation purposes. These entities generally are required to establish a risk management program that is subject to approval by the entity's governing body and is administered by a risk management unit that is independent from the business trading unit and reports to senior management.[1031] In addition, models are required to be independently validated (internally or externally). Model-based valuation is also subject to periodic reconciliation with the general ledger and to annual independent (internal or external) audit, review and testing.[1032]	factors, before considering granting approval.[1033] SBSDs are subject to requirements regarding risk monitoring procedures that require the SBSD to determine whether information and data necessary to apply those procedures are accessible on a timely basis and whether information systems are available to adequately capture, monitor, analyse, and report relevant data and Information.[1034] SBSDs and MSBSPs are also subject to requirements regarding internal risk management control systems, which require an independent control risk unit, separation of duties between personnel responsible for entering into a transaction and those responsible for recording the transaction in the books and records, and periodic review by management that the valuation process over the SBSD's or MSBSP's portfolio of products is accessible on a timely basis and information systems are available to capture, monitor, analyse, and report relevant data.[1035]	
H. Bilateral Margins and capital Article 11(3)			

Description of the EMIR provisions on OTC derivatives	Description of the corresponding CFTC provisions	Description of the corresponding SEC provisions	Assessment of Equivalence
General provision in EMIR Financial counterparties shall have risk-management procedures that require the timely, accurate and appropriately segregated exchange of collateral with respect to OTC derivative contracts that are entered into on or after 16 August 2012. Non-financial counterparties referred to in Article 10 shall have risk-management procedures that require the timely, accurate and appropriately segregated exchange of collateral with respect to OTC derivative contracts that are entered into on or after the clearing threshold is exceeded. Regulatory technical standards specifying the risk management procedures, including the levels and type of collateral and the segregation arrangements are still to be developed in order to ensure international compatibility of the rules.	*Capital:* Under the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"), the CFTC and SEC are required to establish capital requirements for nonbank firms that qualify as swap dealers ("SDs"), security-based swap dealers ("SBSDs"), major swap participants ("MSPs") and major security-based swap participants ("MSBSPs"). Dodd-Frank does not require the establishment of capital requirements for a financial counterparty that does not qualify as an SD, SBSD, MSP or MSBSP, nor does it require the establishment of capital requirements for non-financial counterparties. The CFTC, SEC and prudential regulators have proposed rules on bilateral margins that are subject to revision pending the relevant international standards.	*Capital:* Under the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"), the CFTC and SEC are required to establish capital requirements for nonbank firms that qualify as swap dealers ("SDs"), security-based swap dealers ("SBSDs"), major swap participants ("MSPs") and major security-based swap participants ("MSBSPs"). Dodd-Frank does not require the establishment of capital requirements for a financial counterparty that does not qualify as an SD, SBSD, MSP or MSBSP, nor does it require the establishment of capital requirements for non-financial counterparties. The CFTC, SEC and prudential regulators have proposed rules on bilateral margins that are subject to revision pending the relevant international standards.	**Undetermined** Pending the definition of the technical standards specifying the details of bilateral margins and capital, it is not possible to perform an equivalence assessment on these provisions.

Description of the EMIR provisions on OTC derivatives	Description of the corresponding CFTC provisions	Description of the corresponding SEC provisions	Assessment of Equivalence
A. Enforcement and penalties (EMIR, Art. 12)			
Penalties. Member States must lay down the rules on penalties applicable to infringements of the Clearing Obligation, the Reporting Obligation and the Risk-Mitigation Obligation and must take all measures necessary to ensure that they are implemented. Those penalties must include at least administrative fines. The penalties provided for must be effective, proportionate and dissuasive.	*Civil Penalties.*[1036] If a person is found to be liable, civil penalties include temporary or permanent restraining orders or injunctions and fines of not more than $140,000 (or $1,000,000 with respect to manipulation or attempted manipulation) or triple the monetary gain to the person for each violation, restitution or disgorgement.[1037] *Criminal Penalties.*[1038] Criminal penalties for wilful violations of the CEA or CFTC Regulations include fines of not more than $1,000,000 or imprisonment for not more than ten years, or both, together with the costs of prosecution, for each violation.[1039] Such criminal penalties also apply to abuse of the end user clearing exemption under CEA Section 2(h)(4).[1040] *Nature of Penalties/Enforcement.* As a practical matter, the type and level of penalties in a particular case will vary greatly depending on the nature of the underlying violation(s) and associated facts and circumstances (including level of cooperation in the regulatory investigation), with the CFTC (in the case of civil penalties) and the U.S. Department of Justice (in the case of criminal	*Civil Penalties.*[1043] If a person is found to be liable, civil penalties include temporary or permanent restraining orders or injunctions, disgorgement and maximum fines for each violation as follows: FIRST TIER. The maximum amount of penalty for each violation is $5,000 for a natural person or $50,000 for any other person. SECOND TIER. Notwithstanding the First Tier penalties, the maximum amount of penalty for each violation is $50,000 for a natural person or $250,000 for any other person if the act or omission involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement. THIRD TIER. Notwithstanding the First and Second Tier penalties, the maximum amount of penalty for violations is $100,000 for a natural person or $500,000 for any other person if the violation involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and such act or omission directly or indirectly resulted in	Penalties and enforcement of rules under EU Rules are left largely to Member States' respective national regulators, and as a result will differ between jurisdictions. EU Rules, unlike the CEA, do not contemplate private rights of action, which will be determined in accordance with applicable laws of each jurisdiction, it being understood that violations of clearing, reporting or risk-mitigation obligations do not give rise to private rights of action. SEC Rules prescribe specific limits on penalties based on the conduct and the miscreant.

Description of the EMIR provisions on OTC derivatives	Description of the corresponding CFTC provisions	Description of the corresponding SEC provisions	Assessment of Equivalence
	penalties) having wide prosecutorial discretion in the number of violations alleged and nature of the penalties sought in any particular case. *Private Rights of Action*. Private rights of action for damages are available in the case of violations of the CEA or CFTC Regulations that cause actual losses in connection with specified transactional relationships, including the purchase or sale of swaps.[1041] Accordingly, actions for violations of the mandatory clearing requirement, SDR reporting, margin or documentation requirements could be sustained where a plaintiff demonstrates actual losses resulting from the violation. A private action may also be brought against a person who willfully aids or abets a violation of the CEA.[1042]	substantial losses or created a significant risk of substantial losses to other persons or resulted in substantial pecuniary gain to the person who committed the act or omission.[1044] *Criminal Penalties*.[1045] The Exchange Act provides that any person found in willful and knowing violation of the Exchange Act shall upon conviction be fined not more than $5,000,000, or imprisoned not more than 20 years, or both, except that when such person is a person other than a natural person, a fine not exceeding $25,000,000 may be imposed; but no person shall be subject to imprisonment for the violation of any rule or regulation if he proves that he had no knowledge of such rule or regulation.[1046] *Nature of Penalties/Enforcement*. As a practical matter, the type and level of penalties in a particular case will vary greatly depending on the nature of the underlying violation(s) and associated facts and circumstances (including level of cooperation in the regulatory investigation), with the SEC (in the case of civil penalties) and the U.S. Department of Justice (in the case of criminal penalties) having wide prosecutorial discretion in the number of	

Description of the EMIR provisions on OTC derivatives	Description of the corresponding CFTC provisions	Description of the corresponding SEC provisions	Assessment of Equivalence
		violations alleged and nature of the penalties sought in any particular case. *Private Rights of Action*. The Exchange Act does not provide an express action for damages with respect to violations of the Exchange Act or the regulations thereunder, although U.S. courts have held that there is an implied private right of action for specific provisions (such as the antifraud prohibition in Section 10(b)). Private rights of action are not available against persons aiding and abetting a violation of the Exchange Act.	

Description of the EMIR provisions on OTC derivatives	Description of the corresponding CFTC provisions	Description of the corresponding SEC provisions	Assessment of Equivalence
Disclosure. Member States must ensure that the relevant Competent Authorities disclose every penalty that has been imposed for infringements of the Clearing Obligation, the Reporting Obligation and the Risk-Mitigation Obligation to the public, unless such disclosure would seriously jeopardize the financial markets or cause disproportionate damage to the parties involved.[1047]	*Disclosure.* The CFTC maintains certain records available for public inspection and copying, which includes orders made by the CFTC in the adjudication of cases. The CFTC may publish from time to time the results of any investigations of persons subject to CFTC regulation and such general statistical information gathered therefrom as it deems of interest to the public – provided, that except as otherwise specifically authorized, the CFTC may not publish data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers.[1048] As a matter of practice, the CFTC issues a press release containing the details of each enforcement action brought by the agency.	*Disclosure.* The SEC maintains certain records available for public inspection and copying, which includes orders made by the SEC in the adjudication of cases. The SEC is also authorized in its discretion, to publish information concerning any such violations and investigations.[1049] As a matter of practice, the SEC issues a press release containing the details of each enforcement action brought by them.	Both the CEA and EMIR provide for public disclosure of information concerning enforcement actions and violations, where not adverse to the parties' interests.
No effect of penalties on the relevant transactions. An infringement of the Clearing Obligation, the Reporting Obligation or the Risk-Mitigation Obligation must not affect the validity of an OTC derivative contract or the possibility for the parties to enforce the provisions of an OTC derivative contract. It must not give rise to any right to compensation from a party to an OTC derivative contract.[1050]	*Effect of Penalties on the Relevant Transactions.* With respect to swaps, no agreement, contract, or transaction between eligible contract participants or persons reasonably believed to be eligible contract participants is void, voidable, or unenforceable, and no party to such agreement, contract, or transaction is entitled to rescind, or recover any payment made with respect to, the agreement, contract, or transaction under the CEA or any other provision of Federal or State law, based solely on the failure of the agreement, contract, or transaction (i) to	*Effect of Penalties on the Relevant Transactions.* Subject to limited exceptions, every contract that violates, or that involves a violation, of any provision of the Exchange Act or any regulation thereunder, is void (1) as regards the rights of any person who violates such provision or regulation in connection with such contract, and (2) as regards the rights of any person not a party to such contract who acquired rights to such contract with actual knowledge of the facts underlying the violation of any such provision or regulation.[1052]	Violations of the Clearing Obligation, the Reporting Obligation or the Risk-Mitigation Obligation under EU Rules will not affect the validity of OTC derivative contracts. A violation of the mandatory clearing requirement under the CEA will not affect the validity of such transaction, although other violations may affect the enforceability of the relevant transactions.

Description of the EMIR provisions on OTC derivatives	Description of the corresponding CFTC provisions	Description of the corresponding SEC provisions	Assessment of Equivalence
	meet the definition of a swap under section 1a of the CEA; or (ii) to be cleared in accordance with the requirements of the CEA.[1051]		
Effectiveness of penalties. Member States must, at regular intervals, publish assessment reports on the effectiveness of the penalty rules being applied.	*Effectiveness of penalties*. There is no requirement for the CFTC to regularly assess the effectiveness of its penalties. However, each of the agencies has an office of inspector general that reviews various aspects of each respective agency's operations. In addition, the Government Accountability Office (the investigative arm of the U.S. Congress charged with helping to improve the performance and ensure the accountability of the U.S. federal government) periodically reviews various aspects of the U.S. financial regulatory system. These reviews can include reports on how well government programs and policies are meeting their objectives.	*Effectiveness of penalties*. There is no requirement for the SEC to regularly assess the effectiveness of its penalties. However, each of the agencies has an office of inspector general that reviews various aspects of each respective agency's operations. In addition, the Government Accountability Office (the investigative arm of the U.S. Congress charged with helping to improve the performance and ensure the accountability of the U.S. federal government) periodically reviews various aspects of the U.S. financial regulatory system. These reviews can include reports on how well government programs and policies are meeting their objectives.	EU Rules contemplates an assessment and publication process with respect to the effectiveness of penalties conducted by individual Member States. No process specific to the on-going monitoring of the effectiveness of penalties is mandated by CFTC Rules.

[1] Based on the CFTC draft regulation for SIDCO and Opt-in DCOs dated 5/07/2013
[2] EMIR, Art. 26(1) and CCPs RTS, Art. 3 and 4.
[3] CCPs RTS, Art. 3(1) and (2).
[4] CCPs RTS, Art. 3(1) and (2).
[5] CCPs RTS, Art. 3(7).
[6] CCPs RTS, Art. 3(5).
[7] CCPs RTS, Art. 3(3). See also "Outsourcing" below.
[8] CCPs RTS, Recital 12 and Art. 3(4).
[9] CCPs RTS, Art. 4(1).
[10] CCPs RTS, Art. 4(2).
[11] CCPs RTS, Art. 4(4).
[12] CCPs RTS, Art. 4(5).
[13] CCPs RTS, Art. 4(6).
[14] CCPs RTS, Art. 4(7).
[15] EMIR, Art. 26(2) and CCPs RTS, Art. 5(1).
[16] CCPs RTS, Art. 5.
[17] CCPs RTS, Art. 7(1).
[18] CCPs RTS, Art. 7(2).
[19] CCPs RTS, Art. 7(3).
[20] EMIR, Art. 26(4).
[21] CCPs RTS, Art. 7(6).
[22] EMIR, Art. 26(5).
[23] CCPs RTS, Art. 8(1) to (3).
[24] CCPs RTS, Art. 8(4).
[25] EMIR, Art. 26(6).
[26] CCPs RTS, Art. 8.
[27] CCPs RTS, Art. 8.
[28] EMIR, Art. 26(7); CCPs RTS, Art. 10.
[29] EMIR, Art. 26(8).
[30] CCPs RTS, Art. 11(1) to (4).
[31] CCPs RTS, Art. 11(5).
[32] CEA Section 5b(c)(2)(O)(i).
[33] CFTC Regulation 39.13(b).
[34] CFTC Proposed Regulation 39.24(a)(1)(ii).
[35] CFTC Proposed Regulation 39.25(a)(2).
[36] CFTC Proposed Regulation 40.9(b)(1)(iii)(D).
[37] CFTC Proposed Regulation 39.24(a)(1)(ii).
[38] CFTC Proposed Regulation 39.24(a)(2).
[39] CFTC Proposed Regulation 39.24(a)(1)(ii).
[40] CFTC Proposed Regulation 39.24(a)(2).
[41] CFTC Proposed Regulation 39.25(a)(2).
[42] CFTC Regulation 39.13(b).
[43] CFTC Proposed Regulation 40.9(b)(2).
[44] CFTC Regulation 39.18(b)(2).
[45] CFTC Regulation 39.18(f). See also "Outsourcing" below.
[46] CEA Section 5b(i)(1); CFTC Regulation 39.10(c)(1).
[47] CFTC Regulation 39.13(b).
[48] CFTC Proposed Regulation 39.13(a).
[49] CFTC Regulation 39.13(e)(2).
[50] CFTC Regulation 39.13(h)(5).
[51] CFTC Regulation 39.18(b)(1).
[52] CEA Section 5b(c)(2)(E); CFTC Regulation 39.14.
[53] CFTC Regulation 39.13(h)(5)(i)(B).
[54] CEA Section 5b(c)(2)(L)(i).
[55] CFTC Regulation 39.22.
[56] CFTC Proposed Regulation 39.24(b).
[57] CFTC Proposed Regulation 39.13(g)(3)(i).
[58] CFTC Proposed Regulation 39.25(b).
[59] CFTC Regulation 39.13(b).
[60] CFTC Regulation 39.13(c).
[61] CFTC Regulation 39.13(b).
[62] CFTC Regulation 39.10(c)(1).
[63] CFTC Proposed Regulation 39.24(a)(1)(ii).
[64] CFTC Regulation 39.19(c)(3).
[65] CEA Section 5b(c)(2)(A).
[66] CEA Section 5b(i)(2); CFTC Regulation 39.10(c)(1)(ii).

[67] CFTC Regulation 40.6(a)-(d).
[68] CFTC Regulation 40.10(a).
[69] CFTC Regulation 39.21(d).
[70] CFTC Regulation 39.27(c).
[71] CEA Section 5b(i)(1); CFTC Regulation 39.10(c)(1).
[72] CFTC Regulation 39.10(c)(1)(i).
[73] CEA Section 5b(i)(2); CFTC Regulation 39.10(c)(1)(ii).
[74] CFTC Proposed Regulation 40.9(b)(1)(iii)(D).
[75] CFTC Proposed Regulation 40.9(b).
[76] CFTC Regulation 39.27(b).
[77] CFTC Regulation 39.13(b).
[78] CEA Section 5b(i)(2); CFTC Regulation 39.10(c)(1)(ii).
[79] CFTC Regulation 39.13(c).
[80] CFTC Proposed Regulation 39.13(g), 76 Fed. Reg. 735 (Jan. 6, 2011).
[81] CFTC Proposed Regulation 40.9(d)(vi).
[82] CFTC Regulation 39.10(c)(1)(ii).
[83] CFTC Proposed Regulation 40.9(b)(4).
[84] CFTC Regulation 39.18(b)(2).
[85] CEA Section 5b(c)(2)(I).
[86] CFTC Regulation 39.18(b)(3).
[87] CFTC Regulation 39.18(d).
[88] CFTC Proposed Regulation 40.9(f).
[89] CFTC Proposed Regulation 40.9(d).
[90] CFTC Regulation 39.21(d).
[91] CFTC Regulation 39.16(c)(3).
[92] CFTC Regulation 39.12(a).
[93] CFTC Regulation 39.21(c)(2).
[94] CFTC Regulation 39.21(c)(3) and (4).
[95] CFTC Regulation 39.21(d).
[96] CFTC Regulation 39.21(c)(7).
[97] CFTC Regulation 40.8(c).
[98] CFTC Proposed Regulation 40.9(d).
[99] CFTC Regulation 39.13(b).
[100] CEA Section 5b(i)(3); CFTC Regulation 39.10(c)(3).
[101] CFTC Regulation 39.13(b).
[102] CEA Section 5b(i)(3); CFTC Regulation 39.10(c)(3).
[103] CFTC Regulation 39.13(g)(3).
[104] CFTC Regulation 39.19(c)(3).
[105] SEC Regulation 240.17Ad–22(d)(1).
[106] Exchange Act Section 17A(b)(3)(A).
[107] SEC Form CA-1, Exhibits B and C.
[108] Regulation of Clearing Agencies, Exchange Act Release No. 16900, 20 SEC Docket 415, 427 (July 1, 1980).
[109] *Id*. at 425.
[110] SEC Regulation 240.17Ad–22(d)(8).
[111] SEC Form CA-1, Exhibit C.
[112] SEC Proposed Regulation 240.17Ad–26.
[113] SEC Proposed Regulation 242.701(a)(4) and (b)(4).
[114] Exchange Act Section 3C(j).
[115] Exchange Act Release No. 16900, *supra* note 6, at 426.
[116] SEC Form CA-1, Item 4 and Exhibit C.
[117] SEC Form CA-1, Item 11.
[118] SEC Proposed Regulation 240.3Cj-1(a)-(b)(6).
[119] SEC Regulation 17Ad-22(d)(4).
[120] SEC Regulation 17Ad-22(d)(7).
[121] SEC Regulation 17Ad-22(d)(13).
[122] SEC Regulation 17Ad-22(d)(14).
[123] SEC Regulation 17Ad-22(d)(15).
[124] SEC Regulation 17Ad-22(d)(2).
[125] SEC Regulation 17Ad-22(d)(9).
[126] SEC Regulation 17Ad-22.
[127] Exchange Act Release No. 16900, *supra* note 6, at 425.
[128] Exchange Act Release No. 16900, *supra* note 6, at 424.
[129] Exchange Act Section 3C(j).
[130] SEC Regulation 240.17Ad-22(c)(2).
[131] SEC Proposed Regulation 240.3Cj-1(a) and (b).
[132] Exchange Act Section 19b(1)(b).
[133] SEC Regulation 240.19b-4(a)(6).
[134] SEC Regulation 240.19b-4(c).

[135] Exchange Act Section 19b(1)(b)(2)(C).
[136] SEC Regulation 240.19b-4(n)(1)(i).
[137] Exchange Act Release No. 16900, *supra* note 6, at 422.
[138] SEC Regulation 240.17Ad–22(d)(1).
[139] SEC Proposed Regulation 240.3Cj-1(a)-(b)(6).
[140] SEC Proposed Regulation 240.3Cj-1(a)-(b)(6).
[141] SEC Proposed Regulation 240.3Cj-1(c).
[142] SEC Proposed Regulation 240.17Ad-26(a)-(b)(1).
[143] Exchange Act Release No. 16900, *supra* note 6, at 424.
[144] Exchange Act Release No. 16900, *supra* note 6, at 425.
[145] SEC Proposed Regulation 240.3Cj-1(a).
[146] SEC Proposed Regulation 240.3Cj-1(a); Exchange Act Release No. 16900, *supra* note 6, at 426-7.
[147] SEC Proposed Regulation 240.3Cj-1(b)(1).
[148] Exchange Act Release No. 16900, *supra* note 6, at 430.
[149] Exchange Act Section 17A(b)(3)(C); Exchange Act Release No. 16900, supra note 6, at 420.
[150] *Id.* at 426.
[151] *Id.* 427.
[152] *Id.* at 426.
[153] *Id.* at 425.
[154] *Id.* at 425.
[155] *Id.* at 427.
[156] SEC Proposed Regulation 240.3Cj-1(a).
[157] SEC Regulation 240.17Ad–22(d)(4) and (7).
[158] Exchange Act Release No. 16900, *supra* note 6, at 431.
[159] SEC Proposed Regulation 240.17Ad–23.
[160] Exchange Act Release No. 16900, *supra* note 6, at 431.
[161] SEC Proposed Regulation SCI (http://www.sec.gov/rules/proposed/2013/34-69077.pdf).
[162] SEC Regulation 240.17Ad-22(c) and (d)(11).
[163] Clearing Agency Standards for Operation and Governance, 76 FR 14489, n. 74 (Mar. 16, 2011).
[164] SEC Regulation 240.19b-4(i).
[165] SEC Regulation 17Ad-22(d)(9).
[166] SEC Regulation 240.17Ad-22(d)(9).
[167] Clearing Agency Standards, 77 FR 66253 (Nov. 2, 2012).
[168] SEC Proposed Regulation SCI (http://www.sec.gov/rules/proposed/2013/34-69077.pdf).
[169] SEC Proposed Regulation 240.17Aj-1.
[170] SEC Regulation 240.17Ad-22(c)(2).
[171] Exchange Act Release No. 16900, *supra* note 6, at 424.
[172] Exchange Act Release No. 16900, *supra* note 6, at 427.
[173] Exchange Act Release No. 16900, *supra* note 6, at 424.
[174] Exchange Act Release No. 16900, *supra* note 6, at 427.
[175] Exchange Act Release No. 16900, *supra* note 6, at 427, n. 37.
[176] Exchange Act Release No. 68080 at 71.
[177] CFTC proposed regulation 39.30 (a)
[178] CFTC proposed regulation 39.30 (b)
[179] CFTC proposed regulation 39.30 (c)
[180] CFTC proposed regulation 39.30 (b)
[181] CFTC proposed regulation 39.30 (b)
[182] CFTC proposed regulation 39.30 (b)
[183] CFTC proposed regulation 39.36
[184] CFTC proposed regulation 39.30 (a)
[185] CFTC proposed regulation 39.35
[186] EMIR, Art. 27(1).
[187] EMIR, Art. 27(2).
[188] EMIR, Art. 2(28).
[189] EMIR, Art. 27(2).
[190] EMIR, Art. 27(3).
[191] CCPs RTS, Art. 4(3).
[192] CEA Section 5b(c)(2)(O)(ii).
[193] CEA Section 8a(2).
[194] CFTC Regulation 1.63(b)
[195] CFTC Proposed Regulation 1.3(ccc).
[196] CFTC Proposed Regulation 40.9(b)(1)(i); CFTC Proposed Regulation 39.26(b).
[197] CFTC Proposed Regulation 40.9(b)(3).
[198] CFTC Proposed Regulation 40.9(b)(1)(i); CFTC Proposed Regulation 39.26(b).
[199] CFTC Proposed Regulation 40.9(b)(4).
[200] CFTC Proposed Regulation 40.9(b)(1)(ii).

[201] CFTC Proposed Regulation 40.9(d).
[202] CFTC Regulation 40.1(i). "Rule means any constitutional provision, article of incorporation, bylaw, rule, regulation, resolution, interpretation, stated policy, advisory, terms and conditions, trading protocol, agreement or instrument corresponding thereto, including those that authorise a response or establish standards for responding to a specific emergency, and any amendment or addition thereto or repeal thereof, made or issued by a registered entity or by the governing board thereof or any committee thereof, in whatever form adopted." *Id.*
[203] CFTC Regulation 40.6(a)(7)(vi).
[204] CEA Section 5(b)(c)(2)(O)(ii); CFTC Proposed Regulation 39.24(b)(2).
[205] CEA Section 5b(c)(2)(Q).
[206] CFTC Regulation 39.13(b).
[207] CFTC Proposed Regulation 39.25(b).
[208] SEC Form CA-1, Exhibit B.
[209] SEC Proposed Regulation 240.17Ad-26.
[210] SEC Proposed Regulation 242.700(j).
[211] SEC Proposed Regulation 242.701(a)(3)(ii) and (b)(3)(ii).
[212] SEC Proposed Regulation 242.701(a)(3)(iii) and (b)(3)(iii).
[213] Exchange Act Release No. 16900, *supra* note 6, at 426-7, n. 34.
[214] SEC Proposed Regulation 242.701(a).
[215] SEC Proposed Regulation 242.701(b).
[216] Exchange Act Release No. 16900, *supra* note 6, at 424.
[217] SEC Proposed Regulation 240.17Ad-26.
[218] SEC Proposed Regulation 242.700(j)(2)(iii).
[219] Exchange Act Section 17A(b)(3)(c).
[220] Exchange Act Release No. 16900, *supra* note 6, at 425.
[221] Exchange Act Release No. 16900, *supra* note 6, at 425.
[222] CFTC proposed regulation 39.30 (c)
[223] CFTC proposed regulation 39.30 (b)
[224] EMIR, Art. 28(1).
[225] EMIR, Art. 28(2).
[226] EMIR, Art. 28(3).
[227] CFTC Proposed Regulation 39.13(g), 76 Fed. Reg. 735 (Jan. 6, 2011).
[228] CFTC Proposed Regulation 39.25(b).
[229] SEC Proposed Regulation 242.701(a) and (b).
[230] Exchange Act Section 17A(b)(3)(c).
[231] EMIR, Art. 29(1).
[232] EMIR, Art. 29(2).
[233] CCPs RTS, Art. 12.
[234] CCPs RTS, Recital 16.
[235] CCPs RTS, Art. 13.
[236] CCPs RTS, Art. 14.
[237] CCPs RTS, Art. 15.
[238] CCPs RTS, Art. 16.
[239] CEA Section 5b(c)(2)(K); CFTC Regulation 39.20(b).
[240] CFTC Regulation 39.20(b)(2).
[241] CFTC Regulation 1.31(a)(1).
[242] CFTC Regulation 39.20(a)(5).
[243] CFTC Regulation 39.20(a)(5).
[244] CFTC Regulation 39.20(a)(4).
[245] CFTC Regulation 39.10(c)(5).
[246] CFTC Regulation 39.10(c)(5).
[247] CFTC Regulation 39.20(a)(1).
[248] CFTC Regulation 39.20(a)(2).
[249] CFTC Regulation 39.20(a)(3).
[250] SEC Regulation 240.17a-1.
[251] SEC Regulation 240.17a-1.
[252] SEC Regulation 240.17Ad-22(c)(1).
[253] SEC Proposed Regulation 242.701(a)(2)(iii) and (b)(2)(iii).
[254] Any direct or indirect holding in a CCP representing at least 10% of its voting rights or capital, as set out in Articles 9 and 10 of Directive 2004/109/EC; EMIR, Art. 2(20).
[255] EMIR, Art. 30(1).
[256] EMIR, Art. 30(2).
[257] EMIR, Art. 30(4).
[258] EMIR, Art. 30(3).
[259] EMIR, Art. 30(5).
[260] CFTC Form DCO.
[261] CFTC Proposed Regulation 39.24(b)(3).
[262] CFTC Proposed Regulation 39.13.(h)(6)(vii).

[263] SEC Form CA-1, Exhibit A.
[264] SEC Proposed Regulation 242.701(a)(1) and (b)(1).
[265] EMIR, Art. 31(1).
[266] EMIR, Art. 31(1).
[267] Any direct or indirect holding in a CCP representing at least 10% of its voting rights or capital, as set out in Articles 9 and 10 of Directive 2004/109/EC; EMIR, Art. 2(20).
[268] EMIR, Art. 31(2).
[269] EMIR, Art. 31(3).
[270] EMIR, Art. 31(5) and (6).
[271] CEA Section 5b(c)(2)(J). Other information required to be reported includes: decreases in ownership equity of 20 percent or more; any deficit in the six-month liquid asset requirement; DCO current liabilities exceed current assets; upon issuing a request to clearing member to reduce positions for specified reasons; upon issuing a determination that any position the DCO carries for a clearing member must be liquidated immediately or transferred immediately; clearing member defaults and sanctions; changes to credit facility funding; material legal proceedings; material inadequacies in financial statements; daily margin and cash flow information; quarterly and annual reports. CFTC Regulation 39.19.
[272] "Key personnel" means DCO personnel who play a significant role in the operations of the DCO, the provision of clearing and settlement services, risk management, or oversight of compliance with the CEA and CFTC regulations and orders. Key personnel include, but are not limited to, those persons who are or perform the functions of any of the following: chief executive officer; president; chief compliance officer; chief operating officer; chief risk officer; chief financial officer; chief technology officer; and emergency contacts or persons who are responsible for business continuity or disaster recovery planning or program execution. CFTC Regulation 39.2.
[273] CFTC Regulation 39.19(c)(4)(ix).
[274] CFTC Proposed Regulation 40.9(b)(6).
[275] CFTC Regulation 39.19(c)(4)(vii).
[276] CFTC Regulation 39.3(f).
[277] CFTC Regulation 39.3(f)(4).
[278] SEC Regulation 240.19b-4(a)(6).
[279] SEC Regulation 240.19b-4(n)(1)(i).
[280] EMIR, Art. 32(1).
[281] EMIR, Art. 32(2).
[282] EMIR, Art. 32(3).
[283] EMIR, Art. 32(4).
[284] EMIR., Art. 32(6), (7).
[285] CFTC Regulation 39.3(f)(4).
[286] Where the CCP is a parent or subsidiary undertaking, these written arrangements should also take into account any circumstances of which the CCP is or should be aware which may give rise to conflicts of interest arising as a result of the structure and business activities of other undertakings with which it has a parent or subsidiary undertaking relationship; EMIR Art. 33(3).
[287] EMIR, Art. 33(1).
[288] EMIR, Art. 33(2).
[289] CCPs RTS, Recital 13.
[290] CEA Section 5b(c)(2)(P); CFTC Proposed Regulation 39.25(a); CFTC Proposed Regulation 40.9(e).
[291] Dodd-Frank Section 725(d).
[292] CFTC Proposed Regulation 39.25(b)(2)(i)(A)
[293] Enumerated Entities includes (A) a bank holding company with total consolidated assets of $50,000,000,000 or more, (B) a nonbank financial supervised by the Board of Governors of the Federal Reserve System, (C) an Affiliate of such bank holding company or nonbank financial company, (D) an SD, (E) a MSP, and (F) an associated person of an SD or MSP. CFTC Proposed Regulation 39.25(b)(1).
[294] CFTC Proposed Regulation 39.25(b)(2)(i)(B).
[295] CFTC Proposed Regulation 39.25(b)(2)(ii).
[296] CFTC Proposed Regulation 40.9(f)(2).
[297] CFTC Proposed Regulation 39.25(b).
[298] CFTC Regulation 39.10(c)(2)(ii).
[299] CFTC Regulation 39.10(c)(3).
[300] SEC Proposed Regulation 17Ad-25.
[301] SEC Proposed Regulation 240.3cj-1(c).
[302] SEC Proposed Regulation 240.3cj-1(b)(2).
[303] SEC Proposed Regulation 240.17Ad-23.
[304] Dodd-Frank Section 765(a).
[305] SEC Proposed Regulation 242.701(a).
[306] SEC Proposed Regulation 242.701(b).
[307] CFTC proposed regulation 39.30 (b)
[308] EMIR, Art. 26(3).
[309] EMIR, Art. 34 (1) and (2).
[310] CCPs RTS, Art. 17.
[311] CCPs RTS, Art. 18.
[312] CCPs RTS, Art. 19.
[313] CCPs RTS, Art. 20.
[314] CCPs RTS, Art. 21.

[315] CCPs RTS, Art. 22.
[316] CCPs RTS, Art. 23.
[317] CFTC Proposed Regulation 39.13(a).
[318] CFTC Regulation 39.18(e).
[319] CEA Section 5b(c)(2)(I).
[320] CFTC Regulation 39.18(e)(3).
[321] CFTC Regulation 39.18(j).
[322] SEC Regulation 17Ad-22(d)(4).
[323] Clearing Agency Standards, *supra* note 98, at 66255.
[324] Exchange Act Release No. 16900, *supra* note 6, at 431-2.
[325] SEC Proposed Regulation SCI (http://www.sec.gov/rules/proposed/2013/34-69077.pdf).
[326] SEC Proposed Regulation SCI (http://www.sec.gov/rules/proposed/2013/34-69077.pdf).
[327] SEC Proposed Regulation SCI (http://www.sec.gov/rules/proposed/2013/34-69077.pdf).
[328] SEC Proposed Regulation SCI (http://www.sec.gov/rules/proposed/2013/34-69077.pdf).
[329] CFTC proposed regulation 39.30 (b)
[330] CFTC regulation 39.30
[331] EMIR, Art. 35(1).
[332] EMIR, Art. 35(2).
[333] CEA Section 2(a)(1)(B).
[334] CFTC Part 39 Regulations, Appendix A, Exhibit A-10.
[335] CFTC Regulation 39.18(f).
[336] SEC Form CA-1, Item 4 and Exhibit C.
[337] EMIR, Art. 36(1).
[338] EMIR, Art. 36(1) and (2).
[339] CEA Section 5b(c)(2)(O)(i).
[340] Exchange Act Sections 17A(b)(3)(I) and (b)(4)(B).
[341] SEC Regulation 240.17Ad–22(d)(8).
[342] EMIR, Art. 37(1).
[343] EMIR, Art. 37(3).
[344] EMIR, Art. 37(4) and (5).
[345] EMIR, Art. 37(6).
[346] EMIR, Art. 37(2).
[347] CFTC Regulation 39.12(a).
[348] CFTC Regulation 39.12(a)(2).
[349] CFTC Regulation 39.12(a)(5).
[350] CFTC Regulation 39.13(h)(5).
[351] CFTC Regulation 39.12(a).
[352] CFTC Regulation 39.12(a)(5).
[353] CFTC Regulation 39.12(a)(3); CFTC Regulation 39.16(c)(2)(iii).
[354] CFTC Regulation 39.13(h)(5).
[355] SEC Regulation 17Ad-22(d)(2).
[356] SEC Regulation 17Ad-22(b)(5)-(7).
[357] Exchange Act Section 17A(b)(5)(C).
[358] SEC Regulation 17Ad-22(d)(2).
[359] EMIR, Art. 38(1).
[360] EMIR, Art. 38(3) to (5).
[361] EMIR, Art. 38(1).
[362] EMIR, Art. 38(2).
[363] EMIR, Art. 38(1) and (3).
[364] CFTC Regulation 39.21(c).
[365] CFTC Regulation 39.21(c).
[366] CFTC Regulation 39.12(a).
[367] CFTC Regulation 39.16(c)(3).
[368] CFTC Regulation 39.21(d).
[369] CFTC Regulation 39.19(c)(4)(vii).
[370] CFTC Regulation 1.52(j).
[371] CEA Section 5b(c)(2)(L); CFTC Regulation 39.21(a).
[372] CFTC Regulation 39.21(c).
[373] CFTC Regulation 40.8(c).
[374] CFTC Proposed Regulation 40.9(d).
[375] SEC Regulation 240.17Ad-22(d)(9).
[376] Clearing Agency Standards, *supra* note 98, at 66253.
[377] SEC Regulation 240.17Ad-22(c), (d)(2) and (d)(11).
[378] SEC Regulation 240.17Ad-22(d)(9).
[379] SEC Regulation 240.17Ad-22(d)(9).
[380] SEC Proposed Regulation 240.17Aj-1.
[381] CFTC proposed regulation 39.35

[382] EMIR, Art. 39(1) to (3).
[383] EMIR, Art. 39(4) to (6).
[384] EMIR, Art. 39(7).
[385] EMIR, Art. 39(8).
[386] EMIR, Art. 39(9).
[387] EMIR, Art. 39(10).
[388] CFTC Regulation 22.3(b)(2).
[389] CFTC Regulation 22.3(b)(3).
[390] CFTC Regulation 22.3(b)(2)(iv).
[391] CFTC Regulation 22.3(b)(3)(ii).
[392] CFTC Regulations 22.2 and 22.4.
[393] CFTC Regulation 22.3(c)(1).
[394] CFTC Regulation 22.3(c)(2).
[395] CFTC Regulations 22.2 and 22.4.
[396] CFTC Regulation 22.15.
[397] CFTC Regulation 39.13(g)(8)(i)(D).
[398] Exchange Act Section 3E(e).
[399] Clearing Agency Standards, *supra* note 98, at 66235, n. 173.
[400] SEC Regulation 240.15c3-3.
[401] SEC Regulation 240.15c3-3.
[402] Exchange Act Section 3E(b); SEC Proposed Regulation 240.18a-4.
[403] Exchange Act Section 3E(c); SEC Proposed Regulation 240.18a-4.
[404] CFTC proposed regulation 39.35
[405] EMIR, Art. 40(1).
[406] CFTC Regulation 39.11(e)(1)(i).
[407] CEA Section 5b(c)(2)(D)(ii); CFTC Regulation 39.13(e).
[408] CFTC Regulation 39.14(c)(3).
[409] SEC Regulation 17Ad-22(b)(1).
[410] SEC Regulation 17Ad-22(d)(7).
[411] EMIR, Art. 41(1).
[412] CCPs RTS, Recital 21.
[413] EMIR, Art. 41(1).
[414] EMIR, Art. 41(2).
[415] EMIR, Art. 41(3) and (4).
[416] CCPs RTS, Art. 24(1).
[417] CCPs RTS, Art. 24(1).
[418] CCPs RTS, Art. 24(2).
[419] CCPs RTS, Art. 24(4).
[420] CCPs RTS, Art. 25.
[421] CCPs RTS, Art. 26(1).
[422] CCPs RTS, Art. 26(4).
[423] CCPs RTS, Art. 27.
[424] CCPs RTS, Art. 28.
[425] CEA Section 5b(c)(2)(D)(iii); CFTC Regulation 39.13(f)(1)-(2).
[426] CEA Section 5b(c)(2)(D)(iv) CFTC Regulation 39.13(g)(1).
[427] CFTC Regulation 39.13(g)(2)(ii).
[428] CFTC Regulation 39.13(g)(2)(iii).
[429] CFTC Regulation 39.13(g)(2).
[430] CFTC Regulation 39.13(g)(6).
[431] CFTC Regulation 39.13(g)(2)(ii).
[432] CEA Section 5b(c)(2)(D)(iv) CFTC Regulation 39.13(g)(1).
[433] CFTC Regulation 39.13(g)(3).
[434] CFTC Regulation 39.13(g)(7).
[435] CFTC Regulation 39.13(g)(8)(iii).
[436] CFTC Regulation 39.13(g)(9).
[437] CFTC Regulation 39.13(g)(2)(iii).
[438] CFTC Regulation 39.13(g)(2)(iv).
[439] CFTC Regulation 39.13(g)(2)(ii).
[440] CFTC Regulation 39.13(g)(4).
[441] CFTC Regulation 39.13(g)(8)(i).
[442] CFTC Regulation 39.13(g)(8)(ii).
[443] CFTC Regulation 39.13(g)(4).
[444] CFTC Fact Sheet: Proposed Rule for Derivative Clearing Organisation Definitions, Procedures and Core Principles, *available at:* http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/dcodpcp_factsheet.pdf.
[445] SEC Regulation 17Ad-22(b)(2).
[446] SEC Regulation 17Ad-22(b)(1).
[447] SEC Regulation 17Ad-22(a)(4).
[448] SEC Regulation 17Ad-22(b)(2).

[449] Clearing Agency Standards, *supra* note 98, at 66232-3.
[450] Clearing Agency Standards, *supra* note 98, at 66231.
[451] Clearing Agency Standards, *supra* note 98, at 66226.
[452] Clearing Agency Standards, *supra* note 98, at 66231.
[453] Order Granting Conditional Exemptions Under the Securities Exchange Act of 1934 in Connection with Portfolio Margining of Swaps and Security-Based Swaps, Exchange Act Release No. 68433 (Dec. 14, 2012), 77 Fed. Reg. 75,211 (Dec. 19, 2012).
[454] EMIR, Art. 42(1) and (2).
[455] EMIR, Art. 42(3).
[456] EMIR, Art. 42(4).
[457] CCPs RTS, Art. 29.
[458]CCPs RTS, Art. 30.
[459]CCPs RTS, Art. 31.
[460] CFTC Regulation 39.11(a).
[461] CFTC Proposed Regulation 39.13(g)(1)(i).
[462] CFTC Proposed Regulation 39.13(g)(1)(i).
[463] Exchange Act Release No. 16900, *supra* note 6, at 432.
[464] The SEC notes that, in general, "extreme but plausible market conditions" are tail event conditions in which the price movement of a cleared security results in losses exceeding expectations at a 99% confidence interval, causing a CA's exposures to its clearing members to breach margin requirements or other risk controls (i.e., a one out of 100 days scenario). To ensure that the standard is consistently applied across CCPs and that it accurately captures the market understanding of the terminology, the SEC expects to review and publish for public comment rule proposals from CAs adopting a definition for "extreme but plausible market conditions" that is appropriate for the market they serve. Clearing Agency Standards, *supra* note 98, at 66236.
[465] SEC Regulation 17Ad-22(b)(3).
[466] SEC Regulation 17Ad-22(b)(3).
[467] CFTC proposed regulation 39.29
[468] EMIR, Art. 43.
[469] EMIR, Art. 43(3).
[470] CFTC Regulation 39.11(a).
[471] CFTC Regulation 39.11(a).
[472] CFTC Regulation 39.13(f)(2).
[473] SEC Regulation 17Ad-22(b)(3).
[474] SEC Regulation 17Ad-22(b)(1).
[475] CFTC proposed regulation 39.29
[476] EMIR, Art. 44(1).
[477] EMIR, Art. 44 (1).
[478] CCPs RTS, Art. 32.
[479] CCPs RTS, Art. 33.
[480] CCPs RTS, Art. 34.
[481] CFTC Regulation 39.11(e).
[482] CFTC Regulation 39.11(e)(1)(iii).
[483] CEA Section 5b(c)(2)(E); CFTC Regulation 39.14.
[484] CFTC Regulation 39.14(b).
[485] CFTC Regulation 39.11(e)(1)(iii).
[486] CFTC Regulation 39.11(e)(3).
[487] CFTC Regulation 39.11(e)(1)(ii).
[488] CFTC Regulation 39.11(e)(1)(iii).
[489] CEA Section 5b(c)(2)(E); CFTC Regulation 39.14.
[490] SEC Regulation 17Ad-22(d)(3).
[491] SEC Regulation 17Ad-22(d)(3).
[492] SEC Regulation 17Ad-22(d)(3).
[493] CFTC proposed regulation 39.34(e)
[494] EMIR, Art. 45(1) to (4).
[495] CCPs RTS, Art. 35.
[496] CCPs RTS, Art. 36.
[497] CFTC Regulation 39.16(c)(2).
[498] CFTC Regulation 39.19(c)(4)(i).
[499] CFTC Regulation 39.19(c)(4)(vii).
[500] SEC Regulation 17Ad-22(d)(11).
[501] Exchange Act Release No. 16900, *supra* note 6, at 432.
[502] Exchange Act Release No. 16900, *supra* note 6, at 432-3.
[503] EMIR, Art. 46(1).
[504] CCPs RTS, Art. 37 and 42.
[505] CCPs RTS, Art. 38.
[506] CCPs RTS, Art. 39 to 41.
[507] CCPs RTS, Art. 43.
[508] CCPs RTS, Art. 44.
[509] CFTC Regulation 39.13(g)(12).

[510] CFTC Regulation 39.13(g)(11).
[511] CFTC Regulation 39.13(g)(10).
[512] CFTC Regulation 39.13(g)(12).
[513] CFTC Regulation 39.13(g)(13).
[514] CFTC Regulation 39.13(g)(14).
[515] SEC Regulation 17Ad-22(d)(11).
[516] EMIR, Art. 47(6)
[517] EMIR, Art. 47(1); CCPs RTS, Art. 45.
[518] EMIR, Art. 47(3); CCPs RTS, Art. 46.
[519] EMIR, Art. 47(4); CCPs RTS, Art. 47.
[520] EMIR, Art. 47(5).
[521] EMIR, Art. 48(7). Under CCPs RTS, Art. 48, a CCP must determine concentration limits at the levels of individual financial instruments, types of financial instruments, individual issuers, types of issuers, and counterparties with which financial instruments and cash have been deposited on a highly secured basis.
[522] CCPs RTS, Art 48.
[523] CEA Section 5b(c)(2)(F); CFTC Regulation 39.15(e).
[524] CFTC Regulation 39.15(a).
[525] CFTC Regulation 39.15(c).
[526] CFTC Regulation 39.11(e)(3).
[527] CFTC Regulation 39.16(c)(iii).
[528] CFTC Regulation 1.25(b)(1)-(4).
[529] CFTC Regulation 22.3(b)(3).
[530] CFTC Regulation 22.3(b)(1).
[531] CFTC Regulation 39.11(e)(3).
[532] SEC Regulation 17Ad-22(d)(3).
[533] Exchange Act Section 3E(d).
[534] SEC Regulation 17Ad-22(d)(3).
[535] SEC Regulation 17Ad-22(d)(3).
[536] SEC Regulation 17Ad-22(d)(5) and (7).
[537] CFTC proposed regulation 39.34 (e)
[538] EMIR, Art. 48(1).
[539] EMIR, Art. 48(2).
[540] EMIR, Art. 48(3).
[541] EMIR, Art. 48(4).
[542] EMIR, Art. 48(5).
[543] EMIR, Art. 48(6).
[544] EMIR, Art. 48(7).
[545] CFTC Regulation 39.16(b).
[546] CFTC Regulation 39.16(b).
[547] CEA Section 5b(c)(2)(G)(iii).
[548] CEA Section 5b(c)(2)(D)(iii); CFTC Regulation 39.13(f)(1)-(2).
[549] CFTC Regulation 39.19(c)(4)(vii).
[550] CFTC Regulation 39.27(b).
[551] CFTC Regulation 39.15(d).
[552] CFTC Regulation 22.15.
[553] SEC Regulation 17Ad-22(d)(11).
[554] SEC Regulation 17Ad-22(b)(1) and (d)(11).
[555] SEC Regulation 17Ad-22(d)(1).
[556] EMIR, Art. 49(1); CCPs RTS, Art. 50 and 51.
[557] CCPs RTS, Art. 52.
[558] CCPs RTS, Art. 53.
[559] CCPs RTS, Art. 56 and 57.
[560] CCPs RTS, Art. 58.
[561] CCPs RTS, Art. 59.
[562] CCPs RTS, Art. 60.
[563] EMIR, Art. 49(2); CCPs RTS, Art. 61.
[564] CCPs RTS, Art. 62.
[565] EMIR, Art. 49(3); CCPs RTS, Art. 64.
[566] CFTC Regulation 39.13(g)(3),(7), (12) and (13); CFTC Regulation 39.11(c)(1).
[567] CFTC Regulation 39.13(g)(7).
[568] CFTC Regulation 39.11(c)(1).
[569] CFTC Regulation 39.13(g)(12).
[570] CFTC Regulation 39.13(g)(12) and (13).
[571] CFTC Regulation 39.11(c)(1).
[572] CFTC Regulation 39.13(h)(3).
[573] CFTC Regulation 39.16(b).
[574] CFTC Regulation 39.18(j).
[575] CFTC Regulation 39.20(c)(3).

[576] CFTC Regulation 39.20(c)(4).
[577] CFTC Regulation 39.20(c)(6).
[578] SEC Regulation 17Ad-22(b)(2).
[579] SEC Regulation 17Ad-22(b)(4).
[580] Clearing Agency Standards, *supra* note 98, at 66233.
[581] SEC Regulation 17Ad-22(b)(2).
[582] Clearing Agency Standards, *supra* note 98, at 66231.
[583] SEC Regulation 17Ad-22(b)(4).
[584] Clearing Agency Standards, *supra* note 98, at 66230.
[585] Clearing Agency Standards, *supra* note 98, at 66233.
[586] SEC Regulation 17Ad-22(d)(11).
[587] CFTC proposed regulation 39.34 (a)
[588] CFTC proposed regulation 39.34 (a)
[589] CFTC proposed regulation 39.34 (a)
[590] CFTC proposed regulation 39.34 (a)
[591] Exchange Act Release 68080 at 42.
[592] EMIR, Art. 50(1).
[593] EMIR, Art. 50(2) and (3).
[594] Directive 98/26/EC on settlement finality in payment and securities settlement systems and Directive 2009/44/EC amending the Settlement Finality Directive and the Financial Collateral Arrangements Directive.
[595] CEA Section 5b(c)(2)(E); CFTC Regulation 39.14.
[596] CFTC Regulation 39.14(b).
[597] CFTC Regulation 39.14(d).
[598] SEC Regulation 17Ad-22(d)(5).
[599] SEC Regulation 17Ad-22(d)(15).
[600] SEC Regulation 17Ad-22(d)(13).
[601] SEC Regulation 17Ad-22(d)(12).
[602] Exchange Act Section 17(b)(3)(A) and (F).
[603] Under EMIR, Art. 2(29), "senior management" includes the person or persons who effectively direct the business of the trade repository, and the exclusive member or members of the board.
[604] Under EMIR, Art. 2(27), "board" means administrative or supervisory board, or both, in accordance with national company law.
[605] A "board of directors" means the board of directors of an SDR, or for those SDRs whose organizational structure does not include a board of directors, a body performing a function similar to that of a board of directors. 17 C.F.R. 49.22(a).
[606] A "board" means the board of directors of the SBSDR or a body performing a function similar to the board of directors of the SBSDR. Proposed SBSDR Rule, §240.13n-4(a)(2).
[607] Proposed SBSDR Rule, §240.13n-4(c)(2)(iv).
[608] EMIR, Art. 78(1).
[609] Proposed SBSDR Rule, §240.13n-4(c)(2).
[610] EMIR, Art. 78(2).
[611] Under EMIR, Art. 2(24), "close links" means a situation in which two or more natural or legal persons are linked by:

(a) participation, by way of direct ownership or control (as defined below), of 20% or more of the voting rights or capital of an undertaking; or

(b) control or a similar relationship between any natural or legal person and an undertaking or a subsidiary (as defined below) of a subsidiary also being considered a subsidiary of the parent undertaking (as defined below) which is at the head of those undertakings.

A situation in which two or more natural or legal persons are permanently linked to one and the same person by a control relationship may also be regarded as constituting a close link between such persons.
Under EMIR, Art. 2(23), "control" means the relationship between a parent undertaking and a subsidiary, as described in Article 1 of Directive 83/349/EEC.
Under EMIR, Art. 2(21), a "parent undertaking" means a parent undertaking, as described in Articles 1 and 2 of Directive 83/349/EEC.
Under EMIR, Art. 2(22), a "subsidiary" means a subsidiary undertaking, as described in Articles 1 and 2 of Directive 83/349/EEC, including a subsidiary of a subsidiary undertaking of an ultimate parent undertaking.
[612] 17 C.F.R. 49.21(a)(1).
[613] 17 C.F.R. 49.21(b)(2).
[614] Proposed SBSDR Rule, §240.13n-4(c)(3).
[615] Proposed SBSDR Rule, §240.13n-11(c)(3).
[616] EMIR, Art. 55.
[617] Proposed SBSDR Rule, §249.1500.
[618] EMIR, Art. 78(3).
[619] Proposed SBSDR Rule, §240.13n-11(c)(4).
[620] Proposed SBSDR Rule, §240.13n-11(c)(5).
[621] EMIR, Art. 78(7).
[622] EMIR, Art. 78(8).
[623] 17 C.F.R. 49.27(a)(1).
[624] 17 C.F.R. 49.27(a)(2).
[625] Proposed SBSDR Rule, §240.13n-4(c)(1)(iii).

[626] Proposed SBSDR Rule, §240.13n-4(c)(1)(ii).
[627] EMIR, Art. 78(7).
[628] 17 C.F.R. 49.17(e).
[629] 17 C.F.R. 49.17(f).
[630] Proposed SBSDR Rule, §240.13n-4(c)(1)(iii).
[631] Proposed SBSDR Rule, §240.13n-9(b)(1).
[632] EMIR, Art. 78(8).
[633] 17 C.F.R. 49.27(b)(1).
[634] 17 C.F.R. 49.27(b)(2).
[635] Proposed SBSDR Rule, §240.13n-4(c)(1)(i).
[636] Including trade confirmation, trade matching, credit event servicing, portfolio reconciliation or portfolio compression services.
[637] EMIR, Art. 78(5).
[638] EMIR, Art. 78(4).
[639] EMIR, Art. 79(1).
[640] 17 C.F.R. 49.24(a)(1).
[641] 17 C.F.R. 49.24(b). These categories are (1) information security, (2) business continuity—disaster planning and resources, (3) capacity and performance planning, (4) systems operations, (5) systems development and quality assurance, and (6) physical security and environmental controls.
[642] 17 C.F.R. 49.24(c).
[643] Proposed SBSDR Rule, §240.13n-6(b).
[644] Proposed SBSDR Rule, §240.13n-6(a)(3) and (b)(2).
[645] EMIR, Art. 79(2).
[646] 17 C.F.R. 49.24(a)(2) and (d).
[647] 17 C.F.R. 49.24(a)(3).
[648] Proposed SBSDR Rule, §240.13n-6(b)(1)(v).
[649] Proposed SBSDR Rule, §240.13n-6(b)(3).
[650] EMIR, Art. 79(3).
[651] 17 C.F.R. 49.4(a)(1).
[652] Proposed SBSDR Rule, §240.13n-2(b) and (c). For these purposes, a "person associated with an SBSDR" means any partner, officer, or director of such SBSDR (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such SBSDR, or any employee of such SBSDR. In this context, "control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise, with a presumption of control for directors, general partners, officers exercising executive responsibility, and persons exercising voting rights of 25% or more.
[653] Proposed SBSDR Rule, §240.13n-5(b)(7) and7(c).
[654] Proposed SBSDR Rule, §240.13n-5(b)(8).
[655] 17 C.F.R. 49.25(a)(1).
[656] 17 C.F.R. 49.25(a)(3).
[657] EMIR, Art. 80(3).
[658] 17 C.F.R. 49.10(a). Under 17 C.F.R. 49.10(b), an SDR may register to accept data for a specific asset class or classes, but if it accepts data for a particular asset class it must accept data from all swaps of that asset class.
[659] 17 C.F.R. 49.10(a)(1).
[660] 17 C.F.R. 49.10(d).
[661] Proposed SBSDR Rule, §240.13n-5(b)(1)(i). If an SBSDR accepts any SBS in a particular asset class, it must accept all SBS in that asset class that are reported to it. Proposed SBSDR Rule, §240.13n-5(b)(1)(ii).
[662] Proposed SBSDR Rule, §240.13n-5(b)(1)(iv).
[663] Proposed SBSDR Rule, §240.13n-5(b)(5).
[664] Proposed SBSDR Rule, §240.13n-5(b)(6).
[665] EMIR, Art. 80(4).
[666] 17 C.F.R. 49.12(e).
[667] Proposed SBSDR Rule, §240.13n-5(b)(2).
[668] See Section I.B. entitled "Reporting Obligation (EMIR, Art. 9)" above.
[669] 17 C.F.R. 49.16(a)(1).
[670] 17 C.F.R. 49.16(a)(2).
[671] 17 C.F.R. 49.16(b).
[672] Proposed SBSDR Rule, §240.13n-9(b)(1).
[673] Proposed SBSDR Rule, §240.13n-9(b)(2).
[674] EMIR, Art. 80(3).
[675] EMIR, Art. 80(5).
[676] 17 C.F.R. 49.11.
[677] Proposed SBSDR Rule, §240.13n-4(b)(3).
[678] Proposed SBSDR Rule, §240.13n-5(b)(1)(iii) and (3).
[679] EMIR, Art. 80(3).
[680] 17 C.F.R. 49.12(b).
[681] 17 C.F.R. 45.2(g)(2).
[682] Proposed SBSDR Rule, §240.13n-5(b)(4).
[683] EMIR, Art. 80(2).
[684] EMIR, Art. 80(6).

[685] See above.
[686] See above.
[687] See above.
[688] EMIR, Art. 80(6).
[689] Note in addition that CEA §9, which applies generally to entities registered with the CFTC, including SDRs, creates felony criminal liability for any employee of a registered entity, "in violation of a regulation issued by the [CFTC]…willfully and knowingly to disclose for any purpose inconsistent with the performance of such person's official duties…any material nonpublic information obtained through special access related to the performance of such duties" or to trade on such information.
[690] 17 C.F.R. 49.17(g).
[691] 17 C.F.R. 49.17(g)(2)(B) and (3).
[692] 17 C.F.R. 49.17(g)(1).
[693] Proposed SBSDR Rule, §240.13n-4(b)(3)(iii).
[694] Reporting Obligation RTS, Art. 3.
[695] EMIR, Art. 9(5)(a) and Reporting Obligation RTS, Art. 1(1)(a).
[696] See Table 1 in the Annex to the Reporting Obligation RTS.
[697] Reporting Obligation RTS, Art. 2(2).
[698] 17 C.F.R. 45.1.
[699] The current list of minimum primary economic terms for swaps in each swap asset class appears in Appendix 1 to Part 45 of the CFTC's rules, reproduced as Appendix 1 hereto.
[700] Under 17 C.F.R. 45.1, "confirming" means the consummation (electronically or otherwise) of legally binding documentation (electronic or otherwise) that memorializes the agreement of the parties to all terms of a swap. A confirmation must be in writing (whether electronic or otherwise) and must legally supersede any previous agreement (electronically or otherwise).
[701] 17 C.F.R. 45.1.
[702] In this context, "asset class" means those SBS in a particular broad category, including, but not limited to, credit derivatives, equity derivatives, and loan-based derivatives. Proposed Reporting Rule, §242.900.
[703] Proposed Reporting Rule, §242.901(c) and (d).
[704] Examples of such events include a counterparty change resulting from an assignment or novation, a partial or full termination of the SBS, a change in the cash flows originally reported, any change to the collateral agreement for uncleared SBS, or a corporate action affecting a security or securities on which the SBS is based (e.g., a merger, dividend, stock split, or bankruptcy). Life cycle events do not include the scheduled expiration of the SBS, a previously described and anticipated interest rate adjustment, or other event that does not result in any change to the contractual terms of the SBS. Proposed Reporting Rule, §242.900.
[705] Proposed Reporting Rule, §242.901(e).
[706] EMIR, Art. 9(5)(b) and Reporting Obligation RTS, Art. 1(1)(b).
[707] See Table 2 in the Annex to the Reporting Obligation RTS.
[708] Reporting Obligation RTS, Art. 1(6).
[709] 17 C.F.R. 45.3(f).
[710] In this context, "asset class" means those SBS in a particular broad category, including, but not limited to, credit derivatives, equity derivatives, and loan-based derivatives. Proposed Reporting Rule, §242.900.
[711] Proposed Reporting Rule, §242.901(c) and (d).
[712] Reporting Obligation RTS, Art. 2(1).
[713] 17 C.F.R. 45.1.
[714] If the relevant SDR only accepts either life cycle event data or state data, the reporting counterparty must report continuation data in that form. 17 C.F.R. 45.4(a).
[715] 17 C.F.R. 45.1. Examples of such events include a counterparty change resulting from an assignment or novation, a partial or full termination of the swap, a change to the end date for the swap, a change in the cash flows or rates originally reported, availability of a legal entity identifier for a swap counterparty previously identified by name or by some other identifier, or a corporate action affecting a security or securities on which the swap is based (e.g., a merger, dividend, stock split, or bankruptcy). Life cycle event data may relate to corporate events of the non-reporting counterparty. 17 C.F.R. 45.5(c)(1)(i)(A) and (ii)(A).
[716] The current list of minimum primary economic terms for swaps in each swap asset class appears in Appendix 1 to Part 45 of the CFTC's rules[, reproduced as Appendix [1] hereto].
[717] 17 C.F.R. 45.1.
[718] Proposed Reporting Rule, §242.901(e).
[719] Reporting Obligation ITS, Art. 1 and Tables 1 and 2 in the Annex to the Reporting Obligation RTS.
[720] 17 C.F.R. 45.13(b).
[721] 17 C.F.R. 45.13(a).
[722] Proposed Reporting Rule, §242.901(h).
[723] Proposed Reporting Rule, §242.903.
[724] 17 C.F.R. 45.7.
[725] 17 C.F.R. 45.7(a).
[726] 17 C.F.R. 45.7(c)(2).
[727] Proposed Reporting Rule, §242.901(c)(1) and (2).
[728] Proposed Reporting Rule, §242.900.
[729] Proposed Reporting Rule, §242.900.
[730] 17 C.F.R. 45.5.
[731] 17 C.F.R. 45.5(a).
[732] 17 C.F.R. 45.5(b).
[733] 17 C.F.R. 45.5(c).
[734]Under EMIR, Art. 55.

[735] In accordance with EMIR, Art. 9(3).
[736] Subject to (i) various no-action relief for SDs and MSPs reporting certain data elements until June 30, 2013 and (ii) an exemptive order which extends the compliance date until July 12, 2013 for foreign SDs that are not affiliates or subsidiaries of a U.S. SD for transactions with non-U.S. counterparties.
[737] In accordance with EMIR, Art. 9(3).
[738] Subject to (i) various no-action relief for SDs and MSPs reporting certain data elements until June 30, 2013 and (ii) an exemptive order which extends the compliance date until July 12, 2013 for foreign SDs that are not affiliates or subsidiaries of a U.S. SD for transactions with non-U.S. counterparties.
[739] EMIR, Art. 9(1).
[740] As prescribed under Reporting Obligation RTS, Art. 3.
[741] Historical swaps include (i) pre-enactment swaps entered into prior to July 21, 2010, the terms of which have not expired as of that date, and (ii) transition swaps entered into on or after July 21, 2010 and prior to the applicable compliance date on which reporting entities are required to comply with the reporting requirements described herein. 17 C.F.R. 46.1. Reporting and recordkeeping requirements for historical swaps are generally less strict than for new swaps.
[742] EMIR, Art. 9(2).
[743] 17 C.F.R. 45.2(a).
[744] 17 C.F.R. 45.2(b).
[745] 17 C.F.R. 45.2(c).
[746] 17 C.F.R. 45.2(e)(1).
[747] 17 C.F.R. 45.2(e)(2).
[748] Under the Exchange Act, counterparties to a SBS must maintain books and records pertaining to the SBS "in such form, in such manner, and for such period as the [SEC] may require." Exchange Act, §13A(c)(2).
[749] Reporting Obligation RTS, Art. 1(3) and (4). Under the Reporting Obligation RTS, Art. 1(5), where one counterparty reports the details of a contract to a trade repository on behalf of the other counterparty, the details reported must include the full set of details that would have been reported had the contracts been reported to the trade repository by each counterparty separately.
[750] 17 C.F.R. 45.3, 45.4 and 45.8.
[751] 17 C.F.R. 45.8(e).
[752] A "financial entity" is defined in CEA §2(h)(7)(c) to mean (i) a SD, (ii) a SBSD, (ii) a MSP, (iii) a MSBSP, (iv) a commodity pool, (v) a private fund as defined under the Investment Advisers Act of 1940, (vii) an employee benefit plan as defined under the Employee Retirement Income Security Act of 1974 or (viii) a person predominantly engaged in activities that are in the business of banking, or in activities that are financial in nature, as defined under the Bank Holding Company Act of 1956.
[753] Proposed Reporting Rule, §242.901(a)(3).
[754] EMIR, Art. 9(1). Under the Reporting Obligation RTS, Art. 1(5), where a third entity reports a contract to a trade repository on behalf of one or both counterparties, the details reported must include the full set of details that would have been reported had the contracts been reported to the trade repository by each counterparty separately.
[755] 17 C.F.R. 45.9.
[756] EMIR, Art. 9(1).
[757] 17 C.F.R. 45.10.
[758] Proposed Reporting Rule, §242.901(e).
[759] EMIR, Art. 9(4).
[760] EMIR, Art. 81(1).
[761] TRs Transparency Obligation RTS, Art. 1(1).
[762] EMIR, Art. 81(5).
[763] TRs Transparency Obligation RTS, Art. 1(2).
[764] TRs Transparency Obligation RTS, Art. 1(2).
[765] 17 C.F.R. 49.16(c).
[766] EMIR, Art. 81(2).
[767] As listed in EMIR, Art. 81(3).
[768] TRs Transparency Obligation RTS, Art. 2(1).
[769] TRs Transparency Obligation RTS, Art. 2(9).
[770] TRs Transparency Obligation RTS, Art. 2(2).
[771] EMIR, Art. 81(4).
[772] 17 C.F.R. 49.17(c)(1).
[773] 17 C.F.R. 49.17(c)(2).
[774] 17 C.F.R. 49.17(c)(3).
[775] Proposed SBSDR Rule, §240.13n-4(b)(5).
[776] Proposed SBSDR Rule, §240.13n-8.
[777] TRs Transparency Obligation RTS, Art. 2(9).
[778] TRs Transparency Obligation RTS, Art. 2(4).
[779] TRs Transparency Obligation RTS, Art. 2(5).
[780] TRs Transparency Obligation RTS, Art. 2(4).
[781] TRs Transparency Obligation RTS, Art. 2(9).
[782] TRs Transparency Obligation RTS, Art. 2(10).
[783] Under 17.C.F.R. 49.17(b), an "appropriate domestic regulator" means (i) the SEC, (ii) each prudential regulator identified in Section 1a(39) of the CEA, (iii) the Financial Stability Oversight Council, (iv) the Department of Justice, (v) any Federal Reserve Bank, (vi) the Office of Financial Research and (vii) any other person the CFTC deems appropriate.
[784] 17 C.F.R. 49.17(d)(2).
[785] 17 C.F.R. 49.17(d)(1) and (6); 17 C.F.R. 49.18.

[786] The specified domestic regulators are (i) each appropriate prudential regulator as defined in Section 3(a)(74) of the Exchange Act, (ii) the Financial Stability Oversight Council, (iii) the CFTC, (iv) the Department of Justice, (v) the Federal Deposit Insurance Corporation and (vi) any other person the SEC determines to be appropriate. Proposed SBSDR Rule, §240.13n-4(b)(9).
[787] Proposed SBSDR Rule, §240.13n-4(b)(10).
[788] In accordance with EMIR, Art. 75.
[789] TRs Transparency Obligation RTS, Art. 3(1).
[790] Under 17.C.F.R. 49.17(b)(2), an "appropriate foreign regulator" means those foreign regulators with an existing memorandum of understanding or other similar type of information sharing arrangement executed with the CFTC and/or foreign regulators without a memorandum of understanding as determined on a case-by-case basis by the CFTC. Foreign regulators who do not currently have a memorandum of understanding with the CFTC may file an application to be considered "appropriate" pursuant to procedures established by the CFTC in 17 C.F.R. 49.17(b)(2).
[791] 17 C.F.R. 49.17(d)(3).
[792] 17 C.F.R. 49.17(d)(1) and (6); 17 C.F.R. 49.18.
[793] Swap Data Repositories: Interpretive Statement Regarding the Confidentiality and Indemnification Provisions of Section 21(d) of the Commodity Exchange Act, 77 Fed. Reg. 65177, 65181 (Oct. 25, 2012).
[794] Proposed SBSDR Rule, §240.13n-4(b)(9).
[795] Proposed SBSDR Rule, §240.13n-4(b)(10).
[796] Under Article 4 of Directive 2004/25/EC of the European Parliament and of the Council of April 21, 2004.
[797] TRs Transparency Obligation RTS, Art. 2(6) and (7).
[798] TRs Transparency Obligation RTS, Art. 2(8).
[799] In accordance with EMIR, Art. 76.
[800] TRs Transparency Obligation RTS, Art. 3(2).
[801] TRs Transparency Obligation RTS, Art. 2(3).
[802] See Section I.B. entitled "Reporting Obligation (EMIR, Art. 9)" above.
[803] TRs Transparency Obligation RTS, Art. 2(11).
[804] 17 C.F.R. 49.17(d)(4).
[805] Proposed SBSDR Rule, §240.13n-4(b)(9) and (10).
[806] In accordance with EMIR, Art. 75.
[807] Under Article 4 of Directive 2004/25/EC of the European Parliament and of the Council of April 21, 2004.
[808] In accordance with EMIR, Art. 76.
[809] EMIR, Art. 83(1).
[810] EMIR, Art. 83(3).
[811] EMIR, Art. 83(4).
[812] EMIR, Art. 83(1).
[813] EMIR, Art. 83(1) and EMIR, Art. 83(3).
[814] EMIR, Art. 83(2).
[815] EMIR, Art. 83(3).
[816] EMIR, Art. 83(4).
[817] EMIR, Art. 83(5)..
[818] Privacy Act of 1974, 5 U.S.C. § 552a.
[819] Freedom of Information Act of 1966, 5 U.S.C. § 552.
[820] CEA Regulations 145.9; Exchange Act Regulations 200.80.
[821] Exchange Act Regulations 200.80a and CEA Regulations Part 145 Appendix A.
[822] EMIR, Art. 60.
[823] EMIR, Art. 61(1).
[824] EMIR, Art. 61(2).
[825] EMIR, Art. 61(3).
[826] Under EMIR, Art. 66.
[827] EMIR, Art. 61(5).
[828] CEA §6(c)(5).
[829] Exchange Act §21(a)(c).
[830] EMIR, Art. 62(1).
[831] EMIR, Art. 62(1).
[832] Under EMIR, Art. 62(5) and (6), where a request for such type of information requires authorization from a judicial authority according to national rules, such authorization must be applied for, including as a precautionary measure. In case of application for such an authorization, the national judicial authority shall control that the decision of ESMA is authentic and that the coercive measures envisaged are neither arbitrary nor excessive having regard to the subject matter of the investigations. In its control of the proportionality of the coercive measures, the national judicial authority may ask ESMA for detailed explanations, in particular relating to the grounds ESMA has for suspecting that an infringement of EMIR has taken place and the seriousness of the suspected infringement and the nature of the involvement of the person subject to the coercive measures. However, the national judicial authority may not review the necessity for the investigation or demand that it be provided with the information on ESMA's file. The lawfulness of ESMA's decision is subject to review only by the Court of Justice of the Union.
[833] EMIR, Art. 62(3).
[834] Under EMIR, Art. 66.
[835] EMIR, Art. 62(4).
[836] CEA §6(c)(5).
[837] Exchange Act §21(a)(c).
[838] EMIR, Art. 63(1).

Under EMIR, Art. 64(8) and (9), where an on-site inspection (under EMIR, Art. 64(1)) or a request for assistance by the relevant competent authority (under EMIR, Art. 64(7) – see below) requires authorization from a judicial authority according to national law, such authorization must be applied for, including as a precautionary measure. In case of application for such an authorization, the national judicial authority shall verify that the decision of ESMA is authentic and that the coercive measures envisaged are neither arbitrary nor excessive having regard to the subject matter of the inspection. In its control of the proportionality of the coercive measures, the national judicial authority may ask ESMA for detailed explanations, in particular relating to the grounds ESMA has for suspecting that an infringement of EMIR has taken place and the seriousness of the suspected infringement and the nature of the involvement of the person subject to the coercive measures. However, the national judicial authority may not review the necessity for the inspection or demand that it be provided with the information on ESMA's file. The lawfulness of ESMA's decision is subject to review only by the Court of Justice of the Union.

[839] EMIR, Art. 63(2).
[840] 17 C.F.R. 49.9(a)(12).
[841] 17 C.F.R. 49.7.
[842] Proposed SBSDR Rule, §240.13n-4(b)(1).
[843] For these purposes, a "non-resident SBSDR" means an SBSDR residing, incorporated, or having its principal place of business in any place not in the United States. Proposed SBSDR Rule, §240.13n-1(a)(2).
[844] Proposed SBSDR Rule, §240.13n-1(g).
[845] Note that ESMA can only register trade repositories that are established in the EU. ESMA can recognize non-EU trade repositories on certain conditions, including that the country in which the trade repository is authorised has entered into a cooperation agreement with EU authorities ensuring that that such authorities, including ESMA, have "immediate and continuous access to all necessary information." EMIR, Art. 77(2).
[846] EMIR, Art. 63(4).
[847] EMIR, Art. 63(4).
[848] Under EMIR, Art. 66.
[849] EMIR, Art. 63(3).
[850] Under EMIR, Art. 66.
[851] 17 C.F.R. 49.9(a)(12).
[852] Proposed SBSDR Rule, §240.13n-4(b)(1).
[853] EMIR, Annex I.
[854] Infringement of EMIR, Art. 78(1).
[855] Infringement of EMIR, Art. 78(2).
[856] Infringement of EMIR, Art. 78(3).
[857] Infringement of EMIR, Art. 78(4).
[858] Infringement of EMIR, Art. 78(5).
[859] Infringement of EMIR, Art. 78(6).
[860] Infringement of EMIR, Art. 78(7).
[861] Infringement of EMIR, Art. 78(8).
[862] Infringement of EMIR, Art. 79(1).
[863] Infringement of EMIR, Art. 79(2).
[864] Infringement of EMIR, Art. 80(1).
[865] Infringement of EMIR, Art. 80(2).
[866] Infringement of EMIR, Art. 80(3).
[867] Infringement of EMIR, Art. 80(4).
[868] Infringement of EMIR, Art. 80(5).
[869] Infringement of EMIR, Art. 80(6).
[870] Infringement of EMIR, Art. 81(1).
[871] Infringement of EMIR, Art. 81(2).
[872] In accordance with EMIR, Art. 61(2).
[873] In accordance with EMIR, Art. 61(3).
[874] Infringement of EMIR, Art. 61(1).
[875] Pursuant to EMIR, Art. 62(1)(c).
[876] Pursuant to EMIR, Art. 73.
[877] EMIR, Art. 64(1).
[878] EMIR, Art. 64(1).
[879] EMIR, Art. 64(2).
[880] EMIR, Art. 64(3).
[881] EMIR, Art. 64(3).
[882] EMIR, Art. 64(3).
[883] EMIR, Art. 64(5).
[884] Under EMIR, Art. 67, before taking any decision on a fine or periodic penalty payment (under EMIR, Art. 65 and 66 – see below), ESMA must give the persons subject to the proceedings the opportunity to be heard on its findings. ESMA may base its decisions only on findings on which the persons subject to the proceedings have had an opportunity to comment. The rights of the defense of the persons subject to the proceedings must be fully respected in the proceedings. They are entitled to have access to ESMA's file, subject to the legitimate interest of other persons in the protection of their business secrets. The right of access to the file does not extend to confidential information or ESMA's internal preparatory documents.
[885] See below.
[886] Under EMIR, Art. 64(6), the investigation officer may not participate in ESMA's deliberations or in any other way intervene in ESMA's decision- making process.

[887] EMIR, Art. 73(1) and (2).
[888] In accordance with EMIR, Art. 65. See below.
[889] EMIR, Art. 73(3).
[890] When making such decision public, ESMA must also make public the right of the trade repository to appeal the decision, the fact, where relevant, that such an appeal has been lodged, specifying that such an appeal does not have suspensive effect, and the fact that it is possible for ESMA's Board of Appeal to suspend the application of the contested decision.
[891] EMIR, Art. 64(8).
[892] EMIR, Art. 74.
[893] In accordance with EMIR, Art. 61.
[894] In accordance with EMIR, Art. 62.
[895] In accordance with EMIR, Art. 63.
[896] CEA §6(c)(5).
[897] Exchange Act §21(a)(c).
[898] EMIR, Art. 65(1).
[899] EMIR, Art. 65(2).
[900] EMIR, Art. 65(3).
[901] EMIR, Annex II.
[902] EMIR, Art. 65(4).
[903] EMIR, Art. 66(1).
[904] In accordance with a decision taken pursuant to EMIR, Art. 73(1)(a).
[905] Pursuant to EMIR, Art. 61. See above.
[906] Pursuant to EMIR, Art. 62. See above.
[907] Pursuant to EMIR, Art. 63. See above.
[908] EMIR, Art. 66(2).
[909] EMIR, Art. 66(3).
[910] EMIR, Art. 66(4).
[911] EMIR, Art. 68.
[912] Such disclosure must not contain personal data within the meaning of Regulation (EC) No 45/2001.
[913] EMIR, Art. 71(1).
[914] 17 C.F.R. 49.4(c).
[915] Proposed SBSDR Rule, §240.13n-2(e).
[916] Proposed SBSDR Rule, §240.13n-2(f).
[917] Note that the Commission may adopt further rules of procedure for the exercise of the power to impose fines or periodic penalty payments, including provisions on the rights of the defence and temporal provisions. EMIR, Art. 64(7).
[918] As referred to in EMIR, Art. 57(1).
[919] EMIR, Art. 71(2).
[920] 17 C.F.R. 49.4(a)(1).
[921] 17 C.F.R. 49.4(a)(2).
[922] Proposed SBSDR Rule, §240.13n-2(b) and (c). For these purposes, a "person associated with an SBSDR" means any partner, officer, or director of such SBSDR (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such SBSDR, or any employee of such SBSDR. In this context, "control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise, with a presumption of control for directors, general partners, officers exercising executive responsibility, and persons exercising voting rights of 25% or more.
[923] Proposed SBSDR Rule, §240.13n-2(b).
[924] CEA § 2(h)(1)(A).
[925] CEA § 2(h)(7)(E)(ii).
[926] Exchange Act § 3C(a)(1); 17 C.F.R. § 240.3Ca-2.
[927] Exchange Act § 3C(g)(5)(B).
[928] Exchange Act § 3C(g)(1)(A).
[929] *See* Exchange Act § 3C(g)(3)(A)(iii)-(iv) (financial entity is defined to include an MSP and an MSBSP).
[930] Exchange Act § 3C(g)(1)(B).
[931] *Id.*; End-User Exception to Mandatory Clearing of Security-Based Swaps, 77 Fed. Reg. 79992, 80000 (Dec. 21, 2010).
[932] Exchange Act § 30(c).
[933] Clearing Exemption for Swaps Between Certain Affiliated Entities, 78 Fed. Reg. 521750 (11 April 2013).
[934] Proposed 17 C.F.R. § 39.6(g)(1).
[935] End-User Exception to the Clearing Requirement for Swaps; Final Rule, 77 Fed. Reg. 42559, 42561-12; CEA § 1a(47)(B)(ix).
[936] CEA § 2(h)(2)(B); 17 C.F.R. § 39.5(a)(2).
[937] 17 C.F.R. § 39.5(b)(5).
[938] 17 C.F.R. § 39.5(b)(6).
[939] Exchange Act § 3C(b)(2)(C)(iii).
[940] Exchange Act § 3C(b)(3).
[941] Exchange Act § 3C(f).
[942] CEA § 2(h)(2)(A); 17 C.F.R. § 39.5(c).
[943] Exchange Act § 3C(b)(1).
[944] *See* Process for Submissions for Review of Security-Based Swaps for Mandatory Clearing and Notice Filing Requirements for Clearing Agencies; Technical Amendments to Rule19b-4 and Form 19b-4 Applicable to All Self-Regulatory Organizations, 77 Fed. Reg. 82490, 84299 (Dec. 30, 2010).

[945] Exchange Act § 3C(d)(2).
[946] CEA § 2(h)(1)(A).
[947] 17 C.F.R. § 22.1.
[948] 17 C.F.R. § 22.1.
[949] Exchange Act § 3C(a)(1).
[950] *See* 17 C.F.R. § 240.17Ad-22(b)(5)-(6).
[951] End-User Exception to Mandatory Clearing of Security-Based Swaps, 77 Fed. Reg. 79992 (Dec. 21, 2010).
[952] *See* Exchange Act § 3C(g)(1)(A).
[953] *See* Exchange Act § 3C(g)(1)(B).
[954] Exchange Act § 3C(g)(3)(A) defines a financial entity to include: (a) SDs, SBSDs, MSPs, MSBSPs, (b) commodity pools, (c) certain private investment funds, (d) certain employee benefit plans, and (e) persons predominantly engaged in activities that are in the business of banking or in activities that are financial in nature.
[955] EMIR, Art. 10(3).
[956] 17 C.F.R. § 240.3a67-1(a)(2).
[957] End-User Exception to Mandatory Clearing of Security-Based Swaps, 77 Fed. Reg. 79992, 80000 (Dec. 21, 2012).
[958] 17 C.F.R. § 39.6(c).
[959] 17 C.F.R. § 39.6(c)(i)(A)-(D).
[960] 17 C.F.R. § 39.6(c)(i)(E).
[961] End-User Exception to the Clearing Requirement for Swaps, 77 Fed. Reg. 42560, 42575 (Jul. 19 2012).
[962] 17 C.F.R. § 1.3(kkk)(2)(ii).
[963] 17 C.F.R. § 240.3a67-4.
[964] 17 C.F.R. § 240.3a67-4(a)(1)(i)-(iii).
[965] 17 C.F.R. § 240.3a67-4(a)(2)(i)-(ii).
[966] Further Definition of "Swap Dealer," "Security-Based Swap Dealer," "Major Swap Participant," "Major Security-Based Swap Participant" and "Eligible Contract Participant", 77 Fed. Reg. 30596, 30677 (May 23, 2012).
[967] 17 C.F.R. § 240.3a67-4(a)(2)(i)-(ii).
[968] End-User Exception to Mandatory Clearing of Security-Based Swaps, 77 Fed. Reg. 79992, 80000 (Dec. 21, 2010).
[969] 17 C.F.R. § 240.3a67-4(a)(2)(vi).
[970] 17 C.F.R. § 240.3a67-4(a)(2)(iii).
[971] 17 C.F.R. § 240.3a67-4(a)(2)(iv).
[972] 17 C.F.R. § 240.3a67-4(a)(2)(i).
[973] 17 C.F.R. § 240.3a67-4(a)(2)(ii).
[974] 17 C.F.R. § 23.500(c).
[975] 17 C.F.R. § 23.500(d).
[976] Proposed Trade Acknowledgment and Verification Rules § 240.15Fi-1(a)(4).
[977] Proposed Trade Acknowledgment and Verification Rules § 240.15Fi-1(a)(10).
[978] Proposed Trade Acknowledgment and Verification Rules § 240.15Fi-1(a)(13).
[979] Proposed Trade Acknowledgment and Verification Rules § 240.15Fi-1(a)(6).
[980] 17 C.F.R. § 23.501(a)(1).
[981] 17 C.F.R. § 23.501(c)(1).
[982] 17 C.F.R. § 23.501(c)(2).
[983] Proposed Trade Acknowledgment and Verification Rules § 240.15Fi-1(c)(1).
[984] Proposed Trade Acknowledgment and Verification Rules § 240.15Fi-1(c)(2).
[985] Proposed Trade Acknowledgment and Verification Rules § 240.15Fi-1(e)(1).
[986] Proposed Trade Acknowledgment and Verification Rules § 240.15Fi-1(e)(3).
[987] Proposed Trade Acknowledgment and Verification Rules § 240.15Fi-1(d).
[988] Proposed Trade Acknowledgment and Verification Rules § 240.15Fi-1(b)(1).
[989] 17 C.F.R. § 23.501(a)(2).
[990] 17 C.F.R. § 23.501(c)(3).
[991] 17 C.F.R. § 23.501(c)(4).
[992] 17 C.F.R. § 23.501(a)(3)(iii).
[993] 17 C.F.R. § 23.501(a)(3)(i).
[994] 17 C.F.R. § 23.501(c)(5).
[995] 17 C.F.R. § 23.501(c)(6).
[996] OTC Derivatives Draft RTS, Art. 11(2).
[997] 17 C.F.R. § 23.501(a)(3)(ii).
[998] 17 C.F.R. § 23.501(c)(7).
[999] 17 C.F.R. § 23.501(c)(8).
[1000] Proposed Trade Acknowledgment and Verification Rules § 240.15Fi-1(c)(1).
[1001] Proposed Trade Acknowledgment and Verification Rules § 240.15Fi-1(c)(2).
[1002] Proposed Trade Acknowledgment and Verification Rules § 240.15Fi-1(e)(1).
[1003] 17 C.F.R. § 23.501(a)(5).
[1004] OTC Derivatives RTS, Art. 11(4).
[1005] 17 C.F.R. § 23.501.
[1006] 77 Fed. Reg. 55,904, 55,926 (Sep. 11, 2012).
[1007] 76 Fed. Reg. 3,859, 3,862 (Jan. 21, 2011).
[1008] CFTC Rule 23.502(a)(1).
[1009] CFTC Rule 23.502(b)(1)

[1010] CFTC Rule 23.502(a)(2) and 23.502(b)(2).
[1011] CFTC Rule 23.500(i).
[1012] OTC Derivatives RTS, Art. 12(3).
[1013] CFTC Rule 23.502(a)(3).
[1014] CFTC Rule 23.502(b)(3).
[1015] CFTC Rule 23.503(a)(1).
[1016] CFTC Rule 23.503(a)(2) and (3).
[1017] CFTC Rule 23.503(a)(3)(i) and (ii).
[1018] CFTC Rule 23.503(b).
[1019] CFTC Rule 23.502(a)(5).
[1020] CFTC Rule 23.502(a)(4).
[1021] CFTC Rule 23.502(b)(4).
[1022] CFTC Rule 23.502(c).
[1023] 17 C.F.R. § 23.431(d)(2).
[1024] 17 C.F.R.23.600(C)(4)(i) and (vi)(C).
[1025] Proposed Margin and Capital Rules §§ 240.18a-3(c)(1)(i), (2)(i).
[1026] Proposed Business Conduct Rules § 240.15Fh-3(c).
[1027] 77 Fed. Reg. 9734, 9768 (Feb. 17, 2012).
[1028] 77 Fed. Reg. 42396, 42411 (July 17, 2011).
[1029] 17 C.F.R. 23.431(d)(2).
[1030] 17 C.F.R. 23.431(d)(3).
[1031] 17 C.F.R. 23.600.
[1032] 17 C.F.R. 23.600(c)(4)(i)(B), (C) and (e). CFTC Rules do not explicitly subject the models used for mid-market price quotes to these risk management standards. However, methodological discrepancies (beyond the factors required to be excluded from mid-market price disclosure) could raise regulatory questions and give rise to discrepancies between mid-market price quotes, collateral calls and risk management measurement of market and credit risk.
[1033] SEC Rules § 240.15c3-1e(a)(1)(iv); Proposed Margin and Capital Rules § 240.18a-1(d)(1)(i)(D).
[1034] Proposed Margin and Capital Rules §§ 240.18a-3(e).
[1035] Proposed Capital and Margin Rules §§ 240.18a-1(g), 240.18a-2(c).
[1036] The CEA and the Exchange Act direct the U.S. federal banking agencies to adopt capital and margin requirements for banking entities that are swap dealers, major swap participants, security-based swap dealers or major security-based swap participants and generally grant such agencies exclusive authority to enforce the provisions of the CEA and the Exchange Act regarding capital and margin requirements applicable to such banking entity for which the respective agency is the prudential regulator. *See* CEA § 4b-1(b); Exchange Act § 15F(l). Violations of the U.S. federal banking agencies' capital/margin requirements could result in penalties or enforcement actions and associated penalties for violations of federal banking agency regulations as well as penalties and enforcement actions under the CEA or the Exchange Act, respectively. Maximum civil penalties under the Federal Deposit Insurance Act (the "FDI Act") and the Bank Holding Company Act (the "BHCA") for violations of law or regulation or for engaging in an unsafe or unsound practice in conducting the affairs of a banking entity generally range from $5,000 to as much as $1 million for each day that a violation continues. *See* 12 U.S.C. § 1818(i)(2) and 12 U.S.C. § 1847(b) (applicable provisions of the FDI Act and BHCA, respectively). The penalties imposed under the FDI Act are divided into three tiers. The highest (tier 3) penalties can generally be imposed on a person who (i) knowingly violates a law or regulation, engages in an unsafe or unsound practice or breaches a fiduciary duty and (ii) knowingly or recklessly causes a substantial loss to the banking entity or a substantial pecuniary gain or other benefit to the party by reason of such violation, breach, or practice. A banking agency may also (i) order restitution, reimbursement, indemnification, or the guarantee against loss if the banking entity was unjustly enriched or the violation or unsafe or unsound practice involved a reckless disregard for the law or any applicable regulations, (ii) restrict the growth of the banking entity, or (iii) require the banking entity to (A) dispose or any loan or asset involved, (B) rescind agreements or contracts, (C) employ qualified personnel, or (D) take other appropriate actions. *See* 12 U.S.C. § 1818(b).
[1037] *See* CEA § 6(c).
[1038] As noted above in footnote 2, U.S. federal banking agencies are generally granted exclusive enforcement authority with respect to capital and margin requirements applicable to banking entities that are SDs, MSPs, SBSDs or MSBSPs. Violations of the U.S. federal banking agencies' capital/margin requirements could result in criminal penalties under federal banking laws as well as under the CEA or the Exchange Act. A knowing violation of the BHCA or of an order or regulation issued by the Board of Governors of the Federal Reserve System (the "FRB") is subject to imprisonment of up to one year and/or a fine of $100,000 for each day the violation continues. A knowing violation with intent to deceive, defraud or profit significantly is subject to imprisonment of up to 5 years and/or a fine of $1 million per day.
[1039] *See* CEA **§§** 9(a) (criminal penalties).
[1040] *See* CEA § 9(a)(6).
[1041] *See* CEA § 22(a).
[1042] *See* CEA § 22(a) (permitting private rights of action against an individual who willfully "aids, abets, counsels, induces, or procures the commission of a violation" of the CEA).
[1043] *See supra*, Note 2.
[1044] *See* Exchange Act §§ 21B(a) and (b).
[1045] *See supra*, Note 4.
[1046] *See* Exchange Act § 32 (a).
[1047] EMIR, Art. 12(2).
[1048] *See* CEA § 8(a)(1).
[1049] Exchange Act 21(a)(1).
[1050] EMIR, Art. 12(3).

[1051] *See* CEA § 22(a)(4).
[1052] Exchange Act 29(b).