



European Securities and
Markets Authority

Final report

Technical advice on third country regulatory equivalence under EMIR – Japan



Table of Contents

Table of contents	2
Section I.	
Executive summary	4
Introduction	5
Purpose and use of the European Commission’s equivalence decision	5
ESMA’s approach to assessing equivalence	7
Section II. Technical advice on CCPs	
Part I – Effective on-going supervision and enforcement	9
Part II - Effective equivalent system for the recognition of CCPs	12
Part III - Legally binding requirements which are equivalent to those of Title IV of EMIR	14
Conclusion	16
Section III. Technical advice on potential duplicative or conflicting requirements	
Part I – Legal, supervisory and enforcement arrangements	17
Conclusion	19
ANNEX I	
Original Mandate from the European Commission – 11 October 2012	20
ANNEX II	
Updated Mandate from the European Commission – 13 June 2012	25
ANNEX III	
Legally binding requirements which are equivalent to those in Title IV of EMIR	28
ANNEX IV	
Legally binding requirements which are equivalent to those in Article 4, 10 and 11 of EMIR	82



Key to the references and terms used in this technical advice

BoJ: Bank of Japan

CDA: Commodity Derivatives Act 2009

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

FIEA: Financial Instruments and Exchange Act 2006

JFSA: Japan Financial Services Agency

NCA: National Competent Authority from the European Union

OTCO: Cabinet Office Ordinance regarding Financial Instruments Clearing Organisations of 1 April 2011

RTS: Regulatory Technical Standards

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 Japanese 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; and 2) 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. On 13 June 2013 the European Commission mandated ESMA to provide it with technical advice on the equivalence between the Japanese regulatory regime on a third aspect of the EU regulatory regime under EMIR, namely the recognition of third country TRs.
3. **This report sets out ESMA's advice to the European Commission in respect of the equivalence between the Japanese regulatory regime and the EU regulatory regime under EMIR in respect of the recognition of third country CCPs and for the clearing 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 Japan under EMIR. Where the European Commission adopts such an implementing act then ESMA may recognise a CCP authorised in that third country. ESMA's conclusions in respect of this technical advice should not be seen to prejudice 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 Japanese regulatory regime and two 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 Japan the original deadline of 15 March 2013 was changed to 15 June 2013. On 13 June 2012, the European Commission further amended the mandate to postpone the deadlines for the delivery of technical advice by ESMA and to change its scope in respect of certain jurisdictions. For Japan the revised deadline of 15 June 2013 was changed to 1 September 2013. The European Commission also extended the scope of the mandate to request that ESMA provide it with technical advice on the equivalence between the Japanese regulatory regime and the EU regulatory regime under EMIR regarding the recognition of third country TRs (see Annex I and II).
2. The mandate on equivalence for Japan therefore 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 Japanese regulatory regime and the EU regulatory regime under EMIR in respect of the recognition of third country CCPs and for the clearing obligation, non-financial counterparties and risk mitigation techniques for uncleared trades. Japan has recently finalised its regulatory regime for TRs and ESMA is still in the process of preparing its technical advice under this limb of the European Commission's mandate. That technical advice will be delivered at a later date.**
4. ESMA has liaised with its counterparts in Japan (JFSA and BoJ) 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 third country 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 an equivalence 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 Article 25(6) of EMIR 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 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 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 that third country.
7. The European Commission has requested ESMA's technical advice in respect of Japan to prepare possible implementing acts under Article 25(6) of EMIR. **This report contains ESMA's advice in respect of Japan 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 a number of countries, including Japan, to prepare possible implementing acts under Article 75(1) of EMIR. Japan has developed rules on TRs via year 2010 amendments to the Japanese Financial Instruments and Exchange Act (FIEA) and a Cabinet Office Ordinance No. 48 on Restrictions on Over-the-Counter Derivatives Transactions, dated 11 July 2012.
10. Following a dialogue with the Japanese authorities, ESMA understands that no trade repository authorised in Japan intends to apply for recognition. ESMA therefore considers inappropriate to make an in-depth assessment of the Japanese regime for trade repositories and on the reporting obligation at this stage.
11. It should be noted that the absence of an equivalence assessment on trade repositories does not prevent the access of Japanese counterparties to EU-based TRs authorised by ESMA. It also does not prevent a Japanese branch of an EU entity to report to a Japanese TR.
12. **Therefore this report does not contain ESMA's advice in respect of Japan under Article 75(1) of EMIR and on the reporting obligation under EMIR. Should the circumstances change, ESMA stands ready to provide the Commission with such advice.**

Potential duplicative or conflicting requirements on market participants

13. 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 undertak-

ings 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.

14. 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 by disapplying EMIR provisions and applying the provisions of the equivalent third country regime.
15. The European Commission has requested ESMA's technical advice in respect of Japan to prepare possible implementing acts under Articles 13(1) and 13(3) of EMIR. **This report contains ESMA's advice in respect of Japan under Articles 13(1) or 13(3) of EMIR.**

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

16. 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 recognition².

ESMA's Approach to assessing equivalence

17. 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 and IV 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 and IV 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).

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.

18. 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.

Section II. Technical advice on CCPs

Part I – Effective on-going supervision and enforcement

19. The current Japanese financial supervisory structure was established, from an institutional point of view, in the late 90s but has, in an international comparison, a very significant track record.
20. Responsibility for the prudential and conduct regulation of deposit-takers, insurers and market participants rests with the Japan Financial Services Agency (JFSA). The Bank of Japan (BoJ) has responsibility for overseeing financial system stability and payments and clearing and settlement systems. JFSA has a role in supervision and the BoJ has a role in oversight of CCPs.
21. Entities providing clearing services as a CCP in Japan are required to be licensed¹; however the regulatory and supervisory framework for CCPs is segmented on the basis of the assets underlying transactions. The Financial Instruments and Exchange Act 2006 (FIEA) establishes the supervisory framework for CCPs clearing securities and financial derivatives. This includes all of the CCPs currently operating in Japan. The Commodity Derivatives Act 2009 (CDA) provides the supervisory framework for CCPs clearing commodities. CCPs in Japan can clear securities, financial derivatives and commodities provided they obtain licenses under both regimes.
22. Focussing on the regulatory and supervisory framework for CCPs clearing securities and financial derivatives, the FIEA specifies that to grant a licence for clearing or settlement, the Prime Minister of Japan must be satisfied, among other things, that the CCP has Business Rules which conform to the applicable domestic laws and regulations, that the financial standing of the applicant is sufficient for undertaking the clearing of financial instruments, that the expected income and expenditures pertaining to the business of the CCP are favourable, that the CCP has sufficient knowledge and experience for conducting the clearing of financial instruments appropriately and with certainty, and that the structure and system of the CCP are adequately developed such that settlement can function adequately and with certainty. Responsibility for making this assessment has been delegated to the JFSA (collectively the conditions for licensing). CCPs clearing securities and financial derivatives in Japan are subject to on-going supervision by the JFSA and oversight by the BoJ.
23. There are currently four CCPs for financial products operating in Japan.

JFSA

24. The JFSA is an agency of the Japanese government which is responsible for the supervision of financial services providers, including banks, financial market participants, insurers and financial market infrastructures.
25. JFSA is responsible for:
 - approving applications for a CCP licence and proposed changes to the Business Rules of a CCP;
 - inspecting the business, books and records of a CCP, ordering the production of reports and assessing CCP's compliance with their obligations;
 - making orders to improve aspects of the business of a CCP and the enforcement of such orders;
 - revoking the license of a CCP or suspending the business of a CCP and the enforcement of such orders.
26. The JFSA is also responsible for ensuring that CCPs operate in a manner that is compatible with the stability of the financial system of Japan.

27. The JFSA expects CCPs to conduct self-assessments against the applicable international standards and to publicly disclose the results of such assessments. The JFSA also conducts onsite inspections and off-site monitoring. Within the JFSA, supervision is undertaken by the Financial Markets Division of the Coordination and Planning Bureau². Onsite inspections of CCPs are conducted by the Securities and Exchange Surveillance Commission which operates as an independent commission under the authority of the JFSA.
28. The technical note in the 2012 FSAP on the oversight and supervision of financial markets infrastructures states that: *“In general, the law gives the FSA specific powers with regard to FMIs consistent with its responsibilities, including the ability to obtain information and induce change. The PSA, the Book entry act, and FIEA stipulate that the FMIs they cover shall be authorized, licensed or designated (respectively) by the FSA. (...) The FSA has the power to obtain information from FMIs and inspect them (the right of inspection is entrusted with SESC, except for payment clearing institutions that are inspected by the Inspection bureau of the FSA). The FSA approves the rules of FMIs and their main changes. It can request FMIs to take improvement measures in order to maintain public benefits and investors protection. If FMIs do not take the required measures and violate the law, the FSA can order the change of management, the suspension of operations or the license’s revocation.”*

BoJ

29. The BoJ is responsible for overseeing payment systems in Japan and as part of this mandate oversees CCPs on the grounds that these systems are closely interrelated with payment systems and can also pose systemic risk similar to payment systems. The BoJ has identified two types of interrelation between a payment system and a CCP: (i) the CCP provides cash accounts or computer systems to transfer funds corresponding to settlement of securities and other financial products; and (ii) the CCP uses other payment systems or financial institutions to transfer funds.³ The focus of the BoJ’s oversight is therefore to ensure that CCPs undertake settlement in a safe and efficient manner and more broadly to ensure that CCPs contribute to the stability of the overall financial system in Japan.
30. The BOJ’s oversight policy and objectives are decided by its policy board and publicly disclosed⁴. The BoJ has defined its objectives in respect of CCPs as being to monitor the design, risk management, and operations of CCPs, to assess them against established safety and efficiency objectives, and to induce changes where necessary. With effect from April 2013, the BoJ has adopted the CPSS-IOSCO Principles for Financial Market Infrastructures (PFMIs) as the benchmark against which it will hold CCPs authorised in Japan. One of the BOJ’s objectives is to ensure that CCPs comply with the applicable CPSS-IOSCO international standards and to this end the BoJ aims to continuously assess compliance and induce change where necessary. The BoJ also conducts onsite inspections and off-site monitoring where appropriate. Within the BoJ, oversight is undertaken by the Payment and Settlement System Department.
31. The BoJ carries out oversight of CCPs in three phases, namely (i) monitoring the performance and characteristics of the CCP, (ii) assessing the CCP against safety and efficiency objectives, and (iii) inducing changes for improvements where necessary.
32. **Monitoring.** The BoJ analyses and monitors the design, risk management, operations, and other aspects of CCPs based on various sources including information disclosed by the CCP in line with the CPSS-IOSCO Principles for financial market infrastructures: Disclosure framework and assessment methodology and related guidelines, other publicly available information, information reported by the CCP, as well as regular and ad-hoc dialogues with the CCP management.
33. **Assessment.** Based on the information and the results of analysis obtained from the monitoring of respective CCPs, the BoJ determines the systemic importance of individual CCPs, as well as the degree

of relevance of the CCP to the BoJ's objectives. For systemically important CCPs that are highly relevant to the BoJ's objectives, the BoJ evaluates whether the CCP meets the requirements set out in the PFMIs, and makes its own assessment of the CCP.

34. Inducing changes. When issues requiring improvement in CCP design, risk management, and operations are identified as a result of assessment, the BoJ confirms whether the CCP management and clearing members have previously identified these issues and made efforts to address them. If they have not identified the issues, or if they have been discussing how to address the issues without taking any concrete action, the BoJ conveys the issues and encourages them to take action. The BoJ has regular dialogues with CCP operators and clearing members with respect to the issues for improvement and possible solutions that have a significant bearing on the design and operations of CCPs. Through these dialogues, the BoJ seeks to establish a common understanding with CCPs on these issues and solutions, and encourages them to take actions that will contribute to the safety and efficiency of the CCP.

ESMA assessment

35. The supervisory and enforcement regime for CCPs in Europe envisages 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.
36. 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.
37. On the basis of ESMA's experience in assessing common supervisory practices among European authorities, ESMA can conclude that these are not dissimilar to the ones applicable in Japan.
38. 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.
39. The last FSAP for Japan was conducted in 2012 and covers both an assessment of IOSCO's objectives and principles of securities regulation (IMF Country report 12/230⁵) and a specific assessment of financial market infrastructures (IMF country report 12/229⁶). Of the applicable IOSCO principles, all were considered either fully implemented or broadly implemented, except for principle 12 (*"The regulatory system should ensure an effective and credible use of inspection, investigation, surveillance and enforcement powers and implementation of an effective compliance program"*), which was judged to be partly implemented. However the concern of the FSAP assessors in this instance did not concern the Japanese regime for the supervision of CCPs.
40. With regards to protection of professional secrecy, the IMF report assessed IOSCO Principle 5 (which requires that the staff of the Regulator should observe the highest professional standards, including appropriate standards of confidentiality) and concluded that *"The FSA staff is subject to the duties of loyalty, fairness and confidentiality. The FSA has issued detailed guidance in connection with securities transactions. An internal office monitors compliance with such obligations. In the past, administrative actions have been imposed on staff who have violated such obligations. Cooling off periods exist."*

41. The main findings in the FSAP report depict the implementation of the IOSCO principles of securities regulation.
42. **Against this background ESMA advises the Commission to consider that CCPs are subject to effective supervision and enforcement in Japan.**

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

43. An equivalent system exists in Japan for the recognition of CCPs authorised under the legal regime of a third country. The system involves the third country CCP applying for a ‘Foreign CCP’ license enabling them to provide the same services in Japan as they are authorised to provide in the third country.⁷
44. When considering such licensing request, the JFSA will examine whether the application satisfies the following criteria⁸:
 - (a) the applicant has been given a similar license in its home jurisdiction (and three-years have passed since the applicant commenced providing services similar to clearing services in such jurisdiction);
 - (b) the provisions of the articles of incorporation and business rules conform to laws and regulations and are sufficient to conduct clearing services appropriately and with certainty;
 - (c) the applicant has sufficient financial basis for soundly conducting clearing services and the expected income and expenditure pertaining to the service is favourable;
 - (d) in light of the personnel structure, the applicant has sufficient knowledge and experience for conducting clearing services appropriately and with certainty and has sufficient social credibility (a representative resident in Japan must be appointed); and
 - (e) the applicant has established a sufficient structure and system for conducting clearing appropriately and with certainty, such as obtaining appropriate collateral for clearing of unsettled obligations and operating credible facilities in order to carry out clearing smoothly.
45. These criteria and the requirements regarding corporate structure, etc. are similar to the criteria for domestic CCPs in Japan, as analysed in Annex III.
46. A domestic CCP in Japan may operate a Joint CCP Platform if the domestic CCP obtains the approval of the Commissioner of the JFSA⁹.
47. If the Joint CCP Platform is conducted with a foreign entity which is not licensed as a Foreign CCP, then the domestic CCP applying for the license is required to submit, as a part of its application, documents relating to the foreign entity which are similar to those required for licensing a CCP. The JFSA will examine whether the foreign entity satisfies the following criteria¹⁰:
 - (a) the foreign entity has been given a similar license in its home jurisdiction (and three-years have passed since the foreign entity commenced the provision of services similar to clearing services in such jurisdiction);
 - (b) the provisions of the articles of incorporation and business rules of the foreign entity conform to laws and regulations and the provisions of the articles of incorporation and business rules of, and the contract concerning the joint clearing services between the applicant domestic CCP and

the foreign entity are sufficient to conduct joint clearing services appropriately and with certainty;

- (c) the applicant domestic CCP and the foreign entity have sufficient financial basis for soundly conducting joint clearing services and the expected income and expenditure pertaining to the service is favourable;
- (d) in light of the personnel structure, the applicant domestic CCP and the foreign entity have sufficient knowledge and experience for conducting joint clearing services appropriately and with certainty and have sufficient social credibility;
- (e) an appropriate structure and system has been established for conducting clearing appropriately and with certainty, such as obtaining appropriate collateral for clearing of unsettled obligations and operating credible facilities in order to carry out clearing smoothly;
- (f) the articles of incorporation, business rules or the contract concerning joint clearing services provide that the obligation of the counterparty to the transaction, in respect of which the applicant domestic CCP is to assume obligations of the clearing member, shall be performed with certainty; and
- (g) the joint clearing services by the applicant domestic CCP is found to have no risk of hindering the domestic CCP from conducting clearing services appropriately and with certainty.

48. Although the provisions on joint platforms appear more closely related to the provisions in EMIR on interoperability (which are not part of this technical advice), in assessing the existence of an effective equivalent system for the recognition of CCPs authorised under third country legal regimes, it is important to note that third country CCPs are able to access the Japanese market and operate in Japan
49. to standard regime applicable to third country CCPs wishing to provide their services in Japan, certain requirements for domestic CCPs (local capital requirement and local representation, etc.) are exempted for third country CCPs under the circumstances where they have been granted the same or an equivalent kind of license from foreign authorities, with which JFSA has concluded a cooperative supervision/information-sharing arrangement. Therefore, reliance is being placed on the legal and supervisory arrangements of the third country such that the CCP is subject to appropriate regulatory requirements and effective supervision in its jurisdiction of establishment.
50. One final point should be noted. This relates to the fact that the legal regimes for the mandatory clearing of OTC derivatives in both the EU and Japan allow contracts to be cleared in domestic CCPs and in CCPs authorised in a third country. However, Japan reserves the possibility of requiring the use of a Japanese CCP for certain products “*which may materially affect the stability of the Japanese financial markets and, which due to their characteristics, would require clearing to be performed in Japan*”. This could lead to a situation where Japanese market participants are prevented from using CCPs authorised outside of Japan in order to clear some OTC derivatives. ESMA notes this aspect of the Japanese regime for the mandation of clearing of OTC derivatives, however considers that this is not a relevant consideration for the assessment of whether there exists an effective equivalent system for the recognition of CCPs authorised under third country legal regimes.
51. **Against this background ESMA advises the Commission to consider the legal framework of Japan as providing for an effective equivalent system for the recognition of CCPs authorised under third-country legal regimes.**

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

Jurisdictional level requirements

52. ESMA has undertaken a comparative analysis of the legally binding requirements which are applicable, at a jurisdictional level, to CCPs in Japan and the corresponding legally binding requirements for CCPs under EMIR. The substantive analysis is set out in Annex III.
53. 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 Japan are not broadly equivalent to the legally binding requirements for CCPs under EMIR.
54. 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 JFSA and BoJ. This is in line with the mandate given to ESMA by the European Commission.

Other legal and supervisory arrangements

55. In addition to the legally binding requirements which are applicable, at a jurisdictional level, to CCPs in Japan, ESMA is aware that some CCPs authorised in Japan 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. This is based on a review of the BoJ's Policy on Oversight of Financial Market Infrastructure and a draft of the JFSA's proposed supervisory guideline for Financial Market Infrastructures. These documents suggest that CCPs established in Japan will be expected to meet standards that in a number of areas are broadly equivalent to the legally binding requirements for CCPs under EMIR.
56. The internal policies, procedures, rules, models and methodologies that some CCPs authorised in Japan 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 Japanese authorities 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. ESMA understands that both of these criteria are satisfied insofar as the regulatory regime in Japan provides that CCP rules cannot be changed without the approval or non-objection of the JFSA and any departure by a CCP (or where relevant its clearing members) from, or failure to implement, such internal policies, procedures, rules, models and methodologies can give rise to possible enforcement action.
57. 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 56 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 Japanese CCPs. **Taking into account that the legally binding requirements which are applicable, at a jurisdictional level, to CCPs in Japan and the other legal and supervisory arrangements present in Japan, ESMA advises the Commission to consider that CCPs authorised in Japan do comply with legally binding requirements which, on a holistic basis, 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 ac-**

cordance with the tests set out in paragraph 56 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:

- (1) Organisational requirements.**
 - (2) Requirements for senior management and the Board.**
 - (3) Risk Committee requirements.**
 - (4) Record keeping requirements.**
 - (5) Conflicts of interest requirements.**
 - (6) Business continuity requirements.**
 - (7) Participation requirements.**
 - (8) Transparency requirements.**
 - (9) Segregation and portability requirements.**
 - (10) Exposure management requirements.**
 - (11) Margin requirements.**
 - (12) Default fund requirements.**
 - (13) Other financial resources requirements.**
 - (14) Liquidity risk control requirements.**
 - (15) Default waterfall requirements.**
 - (16) Collateral requirements.**
 - (17) Investment policy requirements.**
 - (18) Default procedure requirements.**
 - (19) Review of models, stress testing and back testing requirements.**
 - (20) Settlement requirements.**
- 58. 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

- 59. ESMA advises the Commission to consider that CCPs authorised in Japan are subject to effective supervision and enforcement on an on-going basis and that the legal framework of Japan provides for an effective equivalent system for the recognition of CCPs authorised under third-country legal regimes.**

60. **ESMA also advises the Commission to consider that the legal and supervisory arrangements of Japan ensure that CCPs authorised in Japan 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 56 above and where they incorporate provisions which, on a holistic basis, are broadly equivalent to the legally binding requirements for CCPs under EMIR in the areas set out in paragraph 57 above.**
61. **On this basis, ESMA would only grant recognition to CCPs authorised in Japan 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 a legally binding requirement in accordance with the tests set out in paragraph 56 above.**
62. **If a CCP authorised in Japan 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.**
63. **ESMA is aware that the JFSA is currently in the processes of developing legally-binding requirements which will be applicable, at a jurisdictional level, to CCPs in Japan. 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 potential duplicative or conflicting requirements

Part I – Legal, supervisory and enforcement arrangements

Legally binding requirements

Clearing obligation

64. As demonstrated in the detailed analysis included in the Annex III, both the EU and Japan have a clearing obligation system. The process in Japan is somehow different from the EU one, since the determination is coming from an administrative decision based on the legislation, while in the EU the first trigger is the fact of a product being cleared by a CCP (bottom-up approach) or a determination by ESMA (top-down), which would only initiate a process for the development of the clearing solutions for the identified classes of derivatives. However, in practice, both European and the Japanese systems, irrespectively of the triggering event, end up considering similar circumstances and apply the clearing obligation when two conditions are met: 1) the product is clearable, or already cleared, by CCPs (feasibility perspective) and 2) its mandatory clearing reduces risk and brings more stability for the financial system (public policy perspective). Therefore, ESMA considers that the general frameworks for the establishment of the clearing obligation are equivalent in purpose and effect in the EU and in Japan.
65. Both the EU and Japan allow the relevant contract to be cleared in an authorised or recognised CCP. However, Japan reserves the possibility of requiring the use of a Japanese CCP for certain products *“which may materially affect the stability of the Japanese financial markets and, which due to their characteristics, would require clearing to be performed in Japan”*. This could lead to the impossibility for Japanese dealers of using foreign CCPs in some derivatives, which will be relevant for the element of recognition of Japanese CCPs under Article 25 of EMIR.
66. As for the scope of application, there are significant differences on the entities subject to the obligation and on the exemptions. The main one is that Japan is applying the clearing obligation in two phases, being the first and current one applicable only to Financial Business Operators (such as dealers) which frequently trade in high volumes, with large notional amounts and with the operational capabilities to provide fair and transparent pricing to a CCP. This effectively means that those entities who do not satisfy the qualification requirements to be Clearing Members as specified by CCPs in their "business rules" will be considered to have a "reasonable reason for not becoming a clearing member" and are excluded from the application of the clearing obligations under the first phase of regulation.
67. It is clear that, until the second phase of the clearing obligation system is deployed by the Japanese authorities, the scope of the EU regime will be much broader, since it covers not only dealers, but all types of financial counterparties and non-financials above the threshold.
68. The Japanese regime includes requirements that differ from those of the EU regime for the purpose of the clearing obligation in terms of personal scope (the range of counterparties subject to it). However, reflecting the discussions underway in international fora including the ODRG where the JFSA is represented, there is a common understanding that the strictest rule would apply when the regimes are not fully equivalent. Therefore, ESMA advises the Commission to grant equivalence that would allow the disapplication of Article 4 of EMIR if the following conditions are met:
 - (a) The product subject to the clearing obligation in the EU is also subject to the clearing obligation in Japan; and

(b) The counterparty in Japan is a non-exempted entity, or if exempted it would benefit from an equivalent exemption if established in the EU.

69. 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 Japanese 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 Japan, then EMIR cannot be disapplied and substituted with the Japanese 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.

Risk mitigation techniques: timely confirmation, portfolio reconciliation, compression and dispute resolution

70. As outlined in Annex III, there are no legally binding requirements in Japan on timely confirmation, portfolio reconciliation, compression and dispute resolution.

71. It should be recognised that the Japanese regulation allows the JFSA to review the soundness of a Financial Business Operator's (including record keeping for transactions) and that the result of such a review could extend to exchange of collateral, timely confirmation, portfolio reconciliation, dispute resolution, monitoring of the value of outstanding OTC derivatives and daily mark-to-market in relation to non-cleared OTC derivative contracts. These could also be items covered by an inspection by the SESC/Finance Bureau as delegated by the JFSA. However, this would not achieve the category of "legally binding requirements" as required under EMIR to determine the equivalence of regimes.

72. The regime for risk mitigation techniques in Japan does not include requirements equivalent to those of EMIR. Against this background, ESMA advises the Commission not to grant equivalence for the purpose of Article 11 of EMIR.

Effective supervisory and enforcement arrangements

73. 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.

74. The FIEA does not provide any supervisory and enforcement regime established specifically for persons subject to the clearing obligation or benefiting from an exemption to the clearing obligations.

75. While only transactions between Financial Business Operators are subject to clearing obligations, such Financial Business Operators are subject to the general supervisory regime provided under the FIEA: they are subject to inspections to be made by the Securities and Exchange Surveillance Commission (the "SESC") or the Local Finance Bureau as delegated by the Commissioner of the JFSA, and the JFSA may take the following administrative action against them:

(a) if the JFSA finds it necessary and appropriate for the public interest or protection of investors, with regard to the business operation or conditions of the assets of a Financial Business Operator, then the Commissioner of the JFSA may order the Financial Business Operator to change its methods of business or take other necessary measures to improve its business operation; (*Articles 51 and 51-2 of the FIEA*)

(b) in cases where a Financial Business Operator falls under any of the prescribed cases such as violating (a) laws and regulations or (b) any order given by the JFSA under laws and

regulations, the Commissioner of the JFSA may rescind the registration for business or may order the suspension of all or any part of the business for a period of up to six months. *(Articles 52 and 52-2 of the FIEA)*

76. Accordingly, if a Financial Business Operator does not fully comply with its clearing obligations, relevant administrative action could be taken against it.
77. In addition, the FIEA does not provide any criminal penalty in relation to non-compliance by a Financial Business Operator with its clearing obligations (but there is a provision of the FIEA which provides for a criminal penalty if a Financial Business Operator fails to keep trade records or to make reports to the JFSA).
78. Against this background, the provisions in the Japanese framework on supervision and enforcement are considered by ESMA as effective, proportionate and dissuasive. Taking into account also the general provisions on the Japanese supervisory system highlighted in Part I, ESMA advises the Commission to consider equivalence for Japan in respect of the effective supervisory and enforcement arrangements.

Conclusion on mechanisms to avoid potential duplicative or conflicting requirements

79. **Due to significant differences in the scope of the clearing obligation, ESMA advises the European Commission to consider the Japanese regime as equivalent with respect to the clearing obligation (Article 4 EMIR) only if in the application of Article 13 of EMIR the following conditions are met: 1) the product subject to the clearing obligation in the EU is also subject to the clearing obligation in Japan and 2) the Counterparty in Japan is a non-exempted entity, or if exempted it would benefit from an equivalent exemption if established in the EU.**
80. **Due to the absence of legally binding requirements equivalent to the risk mitigation techniques foreseen in Article 11 of EMIR in the Japanese regime, ESMA considers that at this stage the necessary conditions to adopt an implementing act under Article 13(3) of EMIR on equivalence of the Japanese regime that would allow for the disapplication of Article 11 of EMIR are not yet in place.**



ANNEX I – Original Mandate from the European Commission – 11 October 2012

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 prejudice 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**")³ 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 powers⁴.

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,⁵ 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.

³ OJ L 331, 15.12.2010, p. 84 - 119.

⁴ OJ L55/13, 28.2.2011, p. 13-18

⁵ 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 ongoing 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 ongoing 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 participants.

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 above-mentioned 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 Report⁶ and those mentioned in the Stockholm Resolution of 23 March 2001⁷.
- 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.

⁶ 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)

⁷ 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 prejudice 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 ongoing 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 ongoing 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.

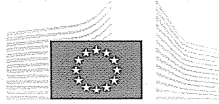
4. Indicative timetable.

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 – Updated Mandate from the European Commission – 13 June 2013



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.

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

Contact:

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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		<i>To be determined</i>
Singapore	1 October 2013	1 October 2013	<i>To be determined</i>
South Korea	1 October 2013		<i>To be determined</i>
Switzerland	1 October 2013	<i>To be determined</i>	1 October 2013
Dubai	<i>Withdrawn</i>		

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 Japanese provisions	Assessment of equivalence
<p>Organisational requirements</p> <p>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.¹¹</p> <ul style="list-style-type: none"> • 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.¹² <p>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.¹³</p>	<p>Organisational requirements</p> <ul style="list-style-type: none"> • Governance arrangements. <i>Under the FIEA, CCPs are required to:</i> • Be a joint stock corporation (kabushiki kaisha) having a board of directors and a corporate auditor (or a board of directors and a committee).⁴¹ <p>As part of the approval process for licensing, demonstrate to the JFSA that the articles of incorporation and business rules of the CCP conform to the applicable laws and regulations and are sufficient to conduct clearing services appropriately and with certainty.⁴²</p> <p>Obtain the prior permission of the JFSA where the CCP intends to amend its articles of incorporation or Business Rules.⁴³ • Risk management and internal control mechanisms. <i>Under the FIEA, CCPs are required to:</i> <p>As part of the approval process for licensing, demonstrate to the JFSA that the CCP has a suffi-</p> </p>	<p>Organisational requirements</p> <p><i>The Japanese regime for CCPs includes organisational requirements. Based on a review of the legally binding requirements which are applicable, at a jurisdictional level, to CCPs in Japan, these requirements are not equivalent to those of EMIR. However, the internal policies, procedures, rules, models and methodologies of individual CCPs, which are out of the scope of this assessment, may contain legally binding provisions equivalent to those of EMIR.</i></p> <ul style="list-style-type: none"> • Governance arrangements. Japanese CCPs are required to have a specific organisational structure, and the required governance arrangements required of CCPs are specified at a high level. However, EMIR includes more specific governance framework requirements while the Japanese regime prescribes broader and more general requirements and relies more heavily on supervisory processes. <p>There are no specific requirements for Japanese CCPs that are part of a group.</p> <p>A Japanese CCP is not specifically required to</p>

<p>The risk management policies, procedures, systems and controls must be part of a coherent and consistent governance framework which is reviewed and updated regularly.¹⁴</p> <p>A CCP which is part of a 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.¹⁵</p> <p>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. 35.¹⁶</p> <p>To ensure that CCPs have the necessary levels of human resources, that CCPs are accountable for their activities, and that CCPs Competent 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.¹⁷</p> <ul style="list-style-type: none"> • 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 	<p>cient process for obtaining collateral necessary for clearing unsettled obligations.⁴⁴</p> <p>As part of the approval process for licensing, demonstrate to the JFSA that the CCP has a sufficient system for conducting clearing appropriately and with certainty including operating credible facilities in order to carry out clearing smoothly.⁴⁵</p> <p>As part of the approval process for licensing, demonstrate to the JFSA that the CCP has a risk management framework adopted by an executive committee of the CCP and that revisions of that risk management committee are subject to approval by the CCP’s executive committee.⁴⁶</p> <ul style="list-style-type: none"> • Compliance policy, procedures and Compliance function. <p><i>Under the FIEA, CCPs are required to:</i></p> <ul style="list-style-type: none"> • As part of the approval process for licensing, demonstrate to the JFSA that the CCP has a compliance policy, procedures and compliance function in place to ensure that the CCP meets and will continue to meet its obligations under the FIEA and other regulatory and supervisory requirements.⁴⁷ • Organisational structure and separation of reporting lines. <p><i>Under the FIEA, CCPs are required to:</i></p> <ul style="list-style-type: none"> • As part of the approval process for licensing, demonstrate to the JFSA that the CCP has a suffi- 	<p>have a chief risk or chief technology officer; and the Japanese regime does not specifically require that chief risk officers and chief compliance officers are “dedicated employees.”</p> <ul style="list-style-type: none"> • Risk management and internal control mechanisms. EMIR specifically requires consideration of risks posed by interoperable CCPs, liquidity providers, central securities depositories, trading venues served by the CCP or other critical service providers, while the Japanese regime relies on more general language regarding consideration of the range of risks to which a CCP is exposed. <p>A Japanese CCP 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.</p> <p>The Japanese regime does not specifically require a CCP to ensure that its risk management function has the necessary authority, expertise and access to all relevant information.</p> <ul style="list-style-type: none"> • Compliance policy, procedures and Compliance function. The Japanese regime does not specifically require a CCP to 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.
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<p>manage such risks. These must be structured to ensure that Clearing Members properly manage and contain the risks they pose to a CCP.¹⁸</p> <p>A CCP must take an integrated and comprehensive view of, and ensure that its risk management tools can 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.¹⁹</p> <p>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 and, to the extent practicable, client-level).²⁰</p> <p>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.</p> <p>The chief risk officer must implement the CCP's risk management framework.²¹</p> <p>A CCP must have adequate internal control mechanisms to assist the board in monitoring the</p>	<p>client:</p> <ul style="list-style-type: none"> ○ process and structure for conducting clearing appropriately, including facilities and staff for the operation of its clearing services;⁴⁸ ○ internal business divisions; ○ division of the business covered by each director (or executive officer); ○ employees with knowledge and experience relating to the provision of clearing services and appropriate allocation of such employees.⁴⁹ <ul style="list-style-type: none"> ● Remuneration policy. <i>Under the FIEA, CCPs are required to:</i> ● Have a Compensation Committee composed of board members (including the CEO) and statutory auditors.⁵⁰ ● Information technology systems. <i>Under the FIEA, CCPs are required to:</i> ● As part of the approval process for licensing, demonstrate to the JFSA that the CCP has sufficient electronic facilities.⁵¹ ● Disclosure. <i>Under the FIEA, CCPs are required to:</i> ● Make available for public inspection its total num- 	<p>The Japanese regime does not specifically require that a CCP's rules, procedures and contractual arrangements are clear and comprehensive or that the CCP have a process for proposing and implementing changes to its rules and procedures including consultation with all affected clearing members or submitting proposed changes to the Japanese authorities.</p> <p>The Japanese regime does not specifically require that a CCP to analyse potential conflicts of law.</p> <p>A Japanese CCP is not specifically required to establish and maintain a permanent and effective compliance function, which operates independently from the other functions of the CCP or that has the necessary authority, resources, expertise and access to all relevant information.</p> <ul style="list-style-type: none"> ● Organisational structure and separation of reporting lines. A Japanese CCP is not required to have a remuneration committee or to establish appropriate remuneration policies. <p>The Japanese regime does not specifically define the responsibilities of a CCP's board, beyond requiring that there be a process and structures for conducting clearing appropriately.</p> <p>The Japanese regime does not specifically require a CCP's board to oversee accountability to shareholders, employees, customers and</p>
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<p>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).²²</p> <p>A CCP's financial statements must be 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.²³</p> <ul style="list-style-type: none"> • 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.²⁴ <p>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 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.</p> <p>A CCP must identify and analyse potential conflicts of</p>	<p>ber of issued shares, the number of voting rights of all shareholders and other matters.⁵²</p> <ul style="list-style-type: none"> • Auditing. <p><i>Under the FIEA, CCPs are required to:</i></p> <ul style="list-style-type: none"> • Establish an internal audit structure based on the corporate governance framework under the Companies Act.⁵³ • Be joint stock corporations which are subject to external audit according to general provision in the Companies Act.⁵⁴ 	<p>other stakeholders.</p> <p>The Japanese regime does not specifically define the responsibilities of a CCP's senior management including requiring it to be responsible for ensuring the consistency of a CCP's activities with the objectives and strategies determined by the board.</p> <p>The Japanese regime does not specifically require CCPs to have reporting lines for risk management, compliance and internal audit that are clear and separate from those of a CCP's other operations.</p> <ul style="list-style-type: none"> • Remuneration policy. A Japanese CCP is not specifically required to have a remuneration policy. <p>Information technology systems. A Japanese CCP is not specifically required 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.</p> <p>A Japanese CCP is not specifically required to base its information technology systems on internationally recognised technical standards or industry best practices.</p> <p>Disclosure. The Japanese regime does not specifically require CCPs to disclose information free of charge, but most information is required to be posted on the</p>
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<p>law issues and develop rules and procedures to mitigate legal risks resulting from such issues.²⁵</p> <p>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, expertise and access to all relevant information.</p> <p>A CCP's chief compliance officer must, <i>inter alia</i>: (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.</p> <ul style="list-style-type: none"> • 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 and a remuneration committee).²⁶ <p>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,</p>		<p>CCP's website.</p> <p>A Japanese CCP is not specifically required to disclose contracts with clearing members and clients, interoperability arrangements, use of collateral, eligible collateral and applicable haircuts, or a list of clearing members.</p> <p>Auditing. The Japanese regime does not specifically require that a CCP's clearing operations, risk management processes, and internal control mechanisms be subject to independent and frequent audit with the results reported to the CCP's board.</p> <p>A Japanese CCP is required to establish and maintain an internal audit but a Japanese CCP is not specifically required to ensure that audits may be performed on an event-driven basis at short notice.</p>
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<p>employees, customers and other stakeholders.²⁷</p> <p>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 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.²⁸</p> <p>A CCP must maintain a clear separation between the reporting lines for risk management and those for the other operations of the CCP.²⁹</p> <p>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.³⁰</p> <ul style="list-style-type: none"> • Remuneration policy. A CCP must adopt, implement and maintain a remuneration policy which promotes sound and effective risk management and does not create incentives to relax risk standards.³¹ 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, 		
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<p>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, compliance and internal audit should be independent of the CCP's business performance.³²</p> <p>The remuneration policy should be independently audited on an annual basis (with the results being made available to the relevant CCPs Competent Authority).³³</p> <ul style="list-style-type: none"> • 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.³⁴ 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.³⁵ <p>A CCP must base its information technology systems on internationally recognized technical standards and industry best practices.</p> <p>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</p>		
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<p>services.³⁶</p> <ul style="list-style-type: none"> • 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 clearing 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.³⁷ • 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.³⁸ <p>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 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.</p> <p>Internal audit must assess the effectiveness of a CCP's risk management processes and control mechanisms,</p>		
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<p>in a manner proportionate to the risks faced by the different business lines.</p> <p>Internal audit assessments must be based on a comprehensive audit plan that is reviewed and reported to its CCPs Competent Authority at least annually.</p> <p>A CCP should also ensure that audits may be performed on an event-driven basis at short notice.³⁹</p> <p>A CCP's clearing operations, risk management processes, internal control mechanisms and accounts must be subject to independent audit at least annually.⁴⁰</p>		
<p>Senior Management and the Board</p> <p>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.⁵⁵</p> <p>A CCP must have a board. At least one third, and no less than two, members of the board must be independent.⁵⁶</p> <p>"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.⁵⁷</p>	<p>Senior Management and the Board</p> <p><i>Under the FIEA, CCPs are required to:</i></p> <ul style="list-style-type: none"> • Be a joint stock corporation (kabushiki kaisha) having a board of directors and a corporate auditor (or a board of directors and a committee).⁶¹ Accordingly, each director, board of directors, corporate auditor, or committee (or its executive officers) is subject to the general requirements of the Companies Act, including in relation to corporate governance, conflicts of interest and fiduciary duties. <p>Not have appointed the following persons to the position of director, accounting advisor,</p>	<p>Senior Management and the Board</p> <p><i>The Japanese regime for CCPs includes requirements for senior management and the Board. Based on a review of the legally binding requirements which are applicable, at a jurisdictional level, to CCPs in Japan, these requirements are not equivalent to those of EMIR. However, the internal policies, procedures, rules, models and methodologies of individual CCPs, which are out of the scope of this assessment, may contain legally binding provisions equivalent to those of EMIR.</i></p> <p>A Japanese CCP is not specifically required to have at least one third, and no less than two,</p>

<p>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.⁵⁸ 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.</p> <p>A CCP’s board’s roles and responsibilities should be clearly defined. Minutes of board meetings should be made available to a CCP’s competent authority.⁵⁹</p> <p>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.⁶⁰</p>	<p>corporate auditor or executive officer of the CCP:</p> <ul style="list-style-type: none"> ○ a person for whom bankruptcy proceedings have been commenced and who has not obtained a restoration of rights; ○ a person who has been punished by imprisonment and for whom five years have not passed since the day when he/she was released; ○ a person who was an officer of a Financial Instruments Business Operator or a CCP or a stock exchange within 30 days prior to the date when such Financial Instruments Business Operator had its business registration rescinded or when such CCP or stock exchange had its approval rescinded under the FIEA (and five years have not passed from the rescindment date); or ○ a person who was ordered by the Commissioner of the JFSA to resign from the position as an officer of a Financial Instruments Business Operator.⁶² <p>As part of the approval process for licensing, demonstrate to the JFSA that the directors, ac-</p>	<p>independent members of its board.</p> <p>A CCP 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.</p> <p>A Japanese CCP is not required to invite representatives of clients to board meetings for matters relating to transparency and segregation requirements.</p> <p>The Japanese regime does not require all minutes of CCP board meetings to be made available to the Japanese authorities.</p> <p>The Japanese regime does not specifically require that a CCP’s board defines, determines and documents an appropriate level of risk tolerance and risk bearing capacity, that the board and senior management to ensure policies, procedures and controls are consistent with those levels or that the CCP’s board assumes final responsibility for managing the CCP’s risks.</p> <p>The Japanese regime for CCPs does not contain any provision which specifically determines the level of expertise, governance and duties of the board of directors.</p>
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	<p>counting advisors, corporate auditors or executive officers of a CCP meet these criteria.⁶³</p> <p>Notify the JFSA when there is a change in any of the directors, accounting advisors, corporate auditors or executive officers of the CCP, providing a CV of the new officer, a written oath by the new officer certifying that he/she is not disqualified from holding office at a CCP, a document describing the business covered by the officer, and a certificate of commercial registration of the CCP.⁶⁴</p> <p>If a person is found to have become a director, accounting advisor, corporate auditor or executive officer of a CCP by way of wrongful means or when a director, accounting advisor, corporate auditor or executive officer of a CCP has violated laws and regulations or administrative sanctions handed down by government agencies, the Commissioner of the JFSA may order the CCP to dismiss him or her.⁶⁵</p> <p>If a director, accounting advisor, corporate auditor or executive officer of a CCP becomes subject to any of the prohibited criteria (listed above), he or she shall lose their position.⁶⁶</p> <p>An officer or employee of a CCP, or a person who was formerly in such position shall neither divulge nor misappropriate any secret which he/she has learned during the course of</p>	
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	<p>the business.⁶⁷</p> <p>An officer or employee of a CCP, or a person who was formerly in such position shall not utilise information which he/she has learned during the course of his/her duties for a purpose other than for the business of the CCP.⁶⁸</p>	
<p>Risk committee</p> <p>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.⁶⁹</p> <p>The risk committee should be chaired by an independent member of the board, hold regular meetings and report directly to the board.⁷⁰</p> <p>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.⁷¹ A CCP must promptly inform the competent authority of any decision in which the board decides not to follow the advice of the risk committee.</p>	<p>Risk committee</p> <p><i>Under the FIEA, CCPs are required to:</i></p> <ul style="list-style-type: none"> As part of the approval process for licensing, demonstrate to the JFSA that the CCP has a risk management framework adopted by an executive committee of the CCP and that revisions of that risk management committee are subject to approval by the CCP’s executive committee.⁷² 	<p>Risk committee</p> <p><i>The Japanese regime for CCPs includes risk committee requirements. Based on a review of the legally binding requirements which are applicable, at a jurisdictional level, to CCPs in Japan, these requirements are not equivalent to those of EMIR. However, the internal policies, procedures, rules, models and methodologies of individual CCPs, which are out of the scope of this assessment, may contain legally binding provisions equivalent to those of EMIR.</i></p> <p>EMIR specifically requires CCPs to establish a risk committee that meets specified composition and procedural requirements. In contrast, the Japanese regime does not specifically require CCPs to establish a risk committee.</p>
<p>Record keeping</p> <p>A CCP must maintain, for at least 10 years, records relating to the services and activities it provides which are sufficient</p>	<p>Record keeping</p> <ul style="list-style-type: none"> General requirements. Record keeping requirements are enforceable 	<p>Record keeping</p> <p><i>The Japanese regime for CCPs includes record keeping requirements. Based on a review of the</i></p>

to enable its CCPs Competent Authority to monitor the CCP's compliance with EMIR.⁷³

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).⁷⁴

- **General requirements.** Such records must be available upon request to the competent authorities, ESMA and the relevant members of the ESCB.⁷⁵

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 reconstruct the clearing process, in order to assess compliance with regulatory requirements.⁷⁶

- **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;⁷⁷
- **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"

under the business licensing regime to which CCPs are subject, which subjects CCPs to inspections by the SESC/JFSA and administrative sanctions handed down by the JFSA, such as a business improvement order, an order for the suspension of business and rescindment of business license or designation.⁸¹

- **Transaction records.**

Under the FIEA, CCPs are required to:

- Maintain records on transactions that are cleared by a CCP (irrespective of whether the transactions are subject to the clearing obligation or not) and report certain transaction data to the JFSA.⁸²

Under the OTCO, CCPs are required to:

- Prepare electronic records in relation to transactions and maintain such records for 5 years, and update the data if there is any change in the recorded items.⁸³

Electronically submit data to the JFSA within 3 business days after the date on which the CCP assumes obligations under a transaction subject to a clearing obligation or another OTC derivative transaction such as a forward, index forward, option, swap, or credit derivative, or where there occurs a relevant change in the recorded items.⁸⁴

legally binding requirements which are applicable, at a jurisdictional level, to CCPs in Japan, these requirements are not equivalent to those of EMIR. However, the internal policies, procedures, rules, models and methodologies of individual CCPs, which are out of the scope of this assessment, may contain legally binding provisions equivalent to those of EMIR.

A Japanese CCP is subject to inspections of its business records, and is required to maintain records of transactions cleared by the CCP for 5 years. EMIR is however, much more granular with regards to the type of records which a CCP must maintain and requires their maintenance for 10 years.

In particular, a Japanese CCP is not specifically required to retain sufficient information to enable the CCP to identify the original terms of a contract pre-clearing or to reconstruct the clearing process, records of the CCP's credit exposure, or all positions held by each clearing member so as to accurately reconstruct the transactions that established the positions.

A Japanese CCP is not specifically required to maintain records of all activities relating to its business and internal organisation which are updated every time there is a material change to the relevant document.

<p>basis;⁷⁸</p> <ul style="list-style-type: none"> • Business records. A CCP must maintain records of all activities relating to its business and internal organisation (which must be updated every time there is a material change to the relevant document);⁷⁹ 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).⁸⁰ 	<ul style="list-style-type: none"> • Position records. No corresponding provisions. • Business records. <p><i>Under the FIEA, CCPs are required to:</i></p> <ul style="list-style-type: none"> • Prepare the following documents specified by the Companies Act: <ul style="list-style-type: none"> ○ financial statements including balance sheets and profit and loss statements, together with supplementary schedules thereto; and ○ business reports, together with supplementary schedules thereto, <p>and to submit these documents to the Commissioner of the JFSA within 3 months after the end of each business year, along with the following attachments:</p> <ul style="list-style-type: none"> ○ a schedule of Clearing Deposits (see 5.8 below), deposit money and other assets which clearing members have deposited with the CCP; ○ a statement of itemized accounts; and ○ a list of major shareholders (holding 10% or more voting rights) of the CCP.⁸⁵ 	
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	<p>Under the Companies Act, financial statements, business reports and their supplementary schedules may be prepared in electronic form and the CCP, as a joint stock company, must retain its financial statements and its supplementary schedules for 10 years. ⁸⁶</p> <ul style="list-style-type: none"> • Records of data reported to a trade repository. <p><i>Under the FIEA, CCPs are required to:</i></p> <ul style="list-style-type: none"> • Maintain records and report to the JFSA’s reporting system data regarding cleared trades in OTC derivatives. ⁸⁷ 	
<p>Shareholders and members with qualifying holdings</p> <p>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 holdings⁸⁸ (“Qualifying Shareholders”).⁸⁹</p> <p>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 prudent management of the CCP.⁹⁰</p> <p>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</p>	<p>Shareholders and members with qualifying holdings</p> <p><i>Under the FIEA:</i></p> <ul style="list-style-type: none"> • A person who becomes a shareholder owning over 5% of the voting rights of a CCP must submit a notification to the Commissioner of the JFSA without delay which describes the holding percentage, the purpose of holding, matters concerning cooperative holders and other matters provided by the FIEA. ⁹⁴ <p>Any person who intends to become a holder of 20% (or 15% if there are facts showing that such person may have a material influence on</p>	<p>Shareholders and members with qualifying holdings</p> <p><i>The Japanese regime for CCPs includes requirements for shareholders and members with qualifying holdings which are applicable, at a jurisdictional level, to CCPs in Japan, and which are broadly equivalent to those of EMIR.</i></p> <p>Persons who become a shareholder of more than 5% of the voting rights in a Japanese CCP are required to notify the Japanese authorities. The Japanese authorities have the power to require a shareholder of more than 15% of the shares of a CCP to reduce their shareholding if the Japanese authorities are not satisfied with the suitability of</p>

<p>appropriate measures to remedy the situation (including by withdrawing the CCP's authorisation).⁹¹</p> <p>A Competent Authority must not authorise a CCP with close links to other natural or legal persons if:</p> <ul style="list-style-type: none"> • those links prevent the effective exercise of the Competent Authority's supervisory functions;⁹² 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 the effective exercise of the Competent Authority's supervisory functions.⁹³ 	<p>the CCP's financial and/or operational policies) or more voting rights of a CCP or a person who intends to establish a company to hold such level of voting rights of a CCP must obtain the prior approval of the Commissioner of the JFSA.⁹⁵</p> <ul style="list-style-type: none"> • The criteria for approval, by the JFSA, of changes in shareholders include⁹⁶: <ul style="list-style-type: none"> (a) that there shall be no risk of impairment of sound and appropriate management of the business of the CCP as a result of the exercise of the voting rights by the applicant; (b) that the applicant has sufficient understanding of the public nature of the business of the CCP; and (c) that the applicant has sufficient social credibility. • Where the JFSA finds it necessary and appropriate for the public interest or protection of investors, the JFSA may order a major shareholder of a CCP to submit reports or materials that will be helpful for understanding the business or property of the CCP, or have the officials inspect the documents and other articles of the major shareholder.⁹⁷ 	<p>the owners or consider that the shareholder might prevent the effective exercise of the authorities supervisory functions.</p> <p>On balance, these requirements are consistent with the objectives of the EMIR regime.</p>
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	<ul style="list-style-type: none"> Where the JFSA considers that a major shareholder of a CCP has violated laws and regulations, or when it is found that an act of a major shareholder of a CCP is likely to impair sound and appropriate operation of the business of the CCP, the JFSA may rescind the authorisation granted to the major shareholder or order the major shareholder to take necessary measures for supervision. A person whose authorisation has been rescinded shall take necessary measures to reduce their shareholding in the CCP to an amount below the requisite thresholds within three months from the date of the rescission of the authorisation. When the JFSA intends to rescind the authorisation of a major shareholder the JFSA shall hold a hearing.⁹⁸ 	
<p>Information to competent authorities</p> <ul style="list-style-type: none"> 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 compliance of the new management with EMIR's obligations relating to the board and senior management of a CCP.⁹⁹ 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.¹⁰⁰ 	<p>Information to competent authorities</p> <p><i>Under the FIEA:</i></p> <ul style="list-style-type: none"> Changes to Management. The names of directors and corporate auditors (directors and executive officers in the case of a company with committees) of a CCP are required to be described in the application form for a license as a CCP. When there is a change in the any of the recorded names, the CCP must notify such change to the Commissioner of the JFSA by submitting a notification form.¹⁰⁵ 	<p>Information to competent authorities</p> <p><i>The Japanese regime for CCPs includes requirements for the provision of information on qualifying holdings which are applicable, at a jurisdictional level, to CCPs in Japan, and which are broadly equivalent to those of EMIR.</i></p> <p>When there are changes to a Japanese CCP's management, the CCP must report information about the change to the JFSA. This information is not required to be as granular as that provided for under EMIR however these requirements are directed towards the same broad objectives as</p>

<ul style="list-style-type: none"> <p>Changes to Shareholders. Any natural or legal person (or persons acting in concert) (the “proposed acquirer”) who decides to (i) acquire a qualifying holding¹⁰¹ 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 notify the relevant CCPs Competent Authority and provide certain relevant information.</p> <p>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.</p> <p>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 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. 32.¹⁰² Within the first 50 working days of the assessment period, the CCPs Competent Authority may request any further information necessary to complete the assessment.¹⁰³</p> <p>If the CCPs Competent Authority decides to oppose the proposed acquisition, it must inform the proposed</p> 	<ul style="list-style-type: none"> <p>Changes to Shareholders. A person who becomes a shareholder owning over 5% of the voting rights of a CCP must submit a notification to the Commissioner of the JFSA without delay which describes the holding percentage, the purpose of holding, matters concerning cooperative holders and other matters provided by the FIEA.¹⁰⁶</p> <p>Any person who intends to become a holder of 20% (or 15% if there are facts showing that such person may have a material influence on the CCP's financial and/or operational policies) or more voting rights of a CCP or a person who intends to establish a company to hold such level of voting rights of a CCP must obtain the prior approval of the Commissioner of the JFSA.¹⁰⁷</p> 	<p>EMIR.</p> <p>The Japanese authorities are 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 CCP. However, the JFSA is required to assess whether there will be a risk of impairment of the sound and appropriate management of the business of the CCP and is required to assess the reputation and soundness of the proposed acquirer.</p> <p>Provisions in the Japanese regime for the notification of changes to shareholders are broadly similar under both EMIR and the Japanese regime.</p> <p>On balance, these differences do not undermine the consistency of the objectives of the Japanese and EMIR regimes.</p>
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<p>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.¹⁰⁴</p>		
<p>Assessment of qualifying holdings</p> <p>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:</p> <ul style="list-style-type: none"> 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 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.¹⁰⁸ 	<p>Assessment of qualifying holdings</p> <p><i>Under the FIEA:</i></p> <ul style="list-style-type: none"> The criteria for approval, by the JFSA, of changes in shareholders include¹⁴³: <ul style="list-style-type: none"> (a) that there shall be no risk of impairment of sound and appropriate management of the business of the CCP as a result of the exercise of the voting rights by the applicant; (b) that the applicant has sufficient understanding of the public nature of the business of the CCP; and (c) that the applicant has sufficient social credibility. Where the JFSA finds it necessary and appropriate for the public interest or protection of investors, the JFSA may order a major shareholder of a CCP to submit reports or materials that will be helpful for understanding the business or property of the CCP, or have the 	<p>Assessment of qualifying holdings</p> <p><i>The Japanese regime for CCPs includes requirements for the assessment of qualifying holdings which are applicable, at a jurisdictional level, to CCPs in Japan, and which are broadly equivalent to those of EMIR.</i></p> <p>The JFSA is not expressly required to assess the financial soundness of proposed acquisitions, whether the CCP will be able to continue to comply with the applicable requirements or make it possible to effectively supervise the CCP, or whether there are grounds to consider that money laundering or terrorist financing has been committed in connection with the proposed acquisition. However, the JFSA is required to assess whether there will be a risk of impairment of the sound and appropriate management of the business of the CCP and is required to assess the reputation and soundness of the proposed acquirer. These requirements are directed towards the same broad objectives as EMIR.</p> <p>On balance, these differences do not undermine the consistency of the objectives of the Japanese and EMIR regimes.</p>

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.¹⁰⁹

Member States must not impose any conditions on the levels of holdings in CCPs that may be acquired, or allow their Competent Authorities to examine proposed acquisitions in terms of the economic needs of the market.¹¹⁰ 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.¹¹¹

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 assessment, and provide each other with all essential information (on their own initiative) and all relevant information (upon request) without undue delay.¹¹²

officials inspect the documents and other articles of the major shareholder.¹¹⁴

- Where the JFSA considers that a major shareholder of a CCP has violated laws and regulations, or when it is found that an act of a major shareholder of a CCP is likely to impair sound and appropriate operation of the business of the CCP, the JFSA may rescind the authorisation granted to the major shareholder or order the major shareholder to take necessary measures for supervision. A person whose authorisation has been rescinded shall take necessary measures to reduce their shareholding in the CCP to an amount below the requisite thresholds within three months from the date of the rescission of the authorisation. When the JFSA intends to rescind the authorisation of a major shareholder the JFSA shall hold a hearing.¹¹⁵

<p>Conflicts of interest</p> <p>A CCP must maintain effective written organisational and administrative arrangements ¹¹⁶ 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.¹¹⁷</p> <p>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 CCP, the Client) before accepting new transactions from that Clearing Member.¹¹⁸</p> <p>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.</p> <p>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.¹¹⁹</p>	<p>Conflicts of interest</p> <p><i>Under the FIEA:</i></p> <ul style="list-style-type: none"> • An officer or employee of a CCP, or a person who was formerly in such a position (i) shall neither divulge nor misappropriate any secret which he/she has learned during the course of the business; and (ii) shall not utilize information which he/she has learned during the course of his/her duties for a purpose other than for the business of the CCP. ¹²⁰ • A CCP is prohibited from treating a clearing member unjustly. ¹²¹ • The board of directors of a CCP must comply with the principles and procedures stipulated by the Companies Act 2005 with regards to conflicts of interests. ¹²² Such requirements including to perform their duties in a loyal manner and in compliance with laws and regulations, the articles of incorporation and to obtain the approval of shareholders for certain transactions. 	<p>Conflicts of interest</p> <p><i>The Japanese regime for CCPs includes conflict of interest requirements. Based on a review of the legally binding requirements which are applicable, at a jurisdictional level, to CCPs in Japan, these requirements are not equivalent to those of EMIR. However, the internal policies, procedures, rules, models and methodologies of individual CCPs, which are out of the scope of this assessment, may contain legally binding provisions equivalent to those of EMIR.</i></p> <p>The Japanese regime does not expressly impose a requirement such that a CCP must identify and manage potential conflicts of interest, maintain procedures to resolve conflicts of interest or disclose conflicts of interest to clearing members and clients.</p> <p>The Japanese regime does not expressly address conflicts arising by board members serving on multiple boards.</p>
<p>Business continuity</p> <p>The CCP must maintain an organisational structure that ensures continuity and orderly functioning in the performance of its services and activities.¹²³</p> <p>A CCP must implement and maintain a business continuity</p>	<p>Business continuity</p> <p><i>Under the FIEA, CCPs are required to:</i></p> <ul style="list-style-type: none"> • As part of the approval process for licensing, demonstrate to the JFSA that the CCP has business continuity plan approved by the 	<p>Business continuity</p> <p><i>The Japanese regime for CCPs includes business continuity requirements. Based on a review of the legally binding requirements which are applicable, at a jurisdictional level, to CCPs in Japan, these</i></p>

<p>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 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.¹²⁴</p> <ul style="list-style-type: none"> • 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 continuity plan should, <i>inter alia</i>, 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.¹²⁵ • 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 scenarios¹²⁶. • Disaster recovery. A CCP must maintain a second- 	<p>CCP's executive committee. CCPs are required to publish a summary of such plan.¹³²</p> <ul style="list-style-type: none"> • Strategy and policy. No corresponding provisions. • Business impact analysis. No corresponding provisions. • Disaster recovery. No corresponding provisions. • Testing and monitoring. No corresponding provisions. • Maintenance. No corresponding provisions. • Crisis management. No corresponding provisions. • Communications. No corresponding provisions. 	<p><i>requirements are not equivalent to those of EMIR. However, the internal policies, procedures, rules, models and methodologies of individual CCPs, which are out of the scope of this assessment, may contain legally binding provisions equivalent to those of EMIR.</i></p> <p>A Japanese CCP is not specifically required to maintain an organisational structure that ensures continuity and orderly functioning in the performance of its services and activities.</p> <p>A Japanese CCP is not specifically required to have a maximum acceptable downtime no higher than 2 hours.</p> <p>A Japanese CCP 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.</p> <p>The Japanese regime does not specifically require CCPs to have a crisis management function to act in case of emergency.</p> <p>The Japanese regime does not expressly require a CCP to test its business continuity arrangements at regular intervals.</p>
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<p>ary 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.¹²⁷</p> <ul style="list-style-type: none"> • 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.¹²⁸ • 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.¹²⁹ • Crisis management. A CCP must have a crisis management function to act in case of emergency, which function must be monitored and reviewed by the board.¹³⁰ • 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).¹³¹ 		
<p>Outsourcing</p> <p>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)</p>	<p>Outsourcing</p> <p><i>Under the FIEA:</i></p> <ul style="list-style-type: none"> • A CCP may not outsource activities related to the 	<p>Outsourcing</p> <p><i>The Japanese regime for CCPs includes outsourcing requirements which are applicable, at a jurisdictional level, to CCPs in Japan, and which</i></p>

<p>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 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 ongoing 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 concerned, are comparable to the data protection standards in effect in the Union.¹³³</p> <p>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. ¹³⁴</p>	<p>assumption of obligations.¹³⁵</p>	<p><i>are broadly equivalent to those of EMIR.</i></p> <p>The Japanese regime goes beyond EMIR requirement by preventing a CCP from outsourcing activities related to its clearing obligations.</p>
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<p>Conduct of business rules – general provisions</p> <p>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.¹³⁶</p> <p>A CCP must have accessible, transparent and fair rules for the prompt handling of complaints.¹³⁷</p>	<p>Conduct of business rules – general provisions</p> <p><i>Under the FIEA, a CCP is required to:</i></p> <ul style="list-style-type: none"> • Not unjustly discriminate against any clearing member.¹³⁸ 	<p>Conduct of business rules – general provisions</p> <p><i>The Japanese regime for CCPs includes general conduct of business requirements which are applicable, at a jurisdictional level, to CCPs in Japan, and which are broadly equivalent to those of EMIR.</i></p> <p>A Japanese CCP is not specifically required to act in the best interests of clearing members when providing services to them; however, a Japanese CCP must not unjustly discriminate against any clearing member.</p> <p>On balance, these differences do not undermine the consistency of the objectives of the Japanese and EMIR regimes.</p>
<p>Participation requirements</p> <p>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 objective is to control risk.¹³⁹</p> <p>Clearing members that clear transactions on behalf of their</p>	<p>Participation requirements</p> <p><i>Under the FIEA, a CCP is required to:</i></p> <ul style="list-style-type: none"> • As part of the approval process for licensing, demonstrate to the JFSA that the CCP has participation requirements/criteria for the admission of clearing members in its "Business Rules (gyomu-hohosho)".¹⁴⁴ <p>As part of the approval process for licensing, the JFSA will examine whether the CCP has participation requirements in line with its potential risks.¹⁴⁵</p>	<p>Participation requirements</p> <p><i>The Japanese regime for CCPs includes participation requirements. Based on a review of the legally binding requirements which are applicable, at a jurisdictional level, to CCPs in Japan, these requirements are not equivalent to those of EMIR. However, the internal policies, procedures, rules, models and methodologies of individual CCPs, which are out of the scope of this assessment, may contain legally binding provisions equivalent to those of EMIR.</i></p>

<p>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.¹⁴⁰</p> <p>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 writing, based on a comprehensive risk analysis.¹⁴¹</p> <p>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.¹⁴²</p> <p>A CCP must ensure the application of the above criteria on an ongoing basis and must annually conduct a comprehensive review of compliance with these provisions by its Clearing Members.¹⁴³</p>		<p>A Japanese CCP is not specifically required to have rules that allow the CCP to identify, monitor and manage concentrations of risk relating to the clearing member’s provision of services to clients.</p> <p>Japanese CCPs are not specifically required to have objective procedures for suspension of clearing members justified by a comprehensive risk analysis and to only deny access to clearing members that meet participation requirements where justified in writing.</p> <p>The Japanese regime does not require CCPs to conduct annually a comprehensive review of compliance with the participation requirements by its clearing members.</p>
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<p>Transparency</p> <p>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).¹⁴⁶</p> <p>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 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.¹⁴⁷</p> <p>A CCP must allow its Clearing Members and Clients separate access to the specific services provided.¹⁴⁸</p> <p>A CCP must inform Clearing Members and their Clients of the risks associated with the services provided.¹⁴⁹</p> <p>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.¹⁵⁰</p>	<p>Transparency</p> <p><i>Under the FIEA, a CCP is required to:</i></p> <ul style="list-style-type: none"> As part of the approval process for licensing, demonstrate to the JFSA that the CCP has specified its operational procedures and system specifications and whether such provisions are disclosed to clearing members and publicly.¹⁵¹ 	<p>Transparency</p> <p><i>The Japanese regime for CCPs includes transparency requirements. Based on a review of the legally binding requirements which are applicable, at a jurisdictional level, to CCPs in Japan, these requirements are not equivalent to those of EMIR. However, the internal policies, procedures, rules, models and methodologies of individual CCPs, which are out of the scope of this assessment, may contain legally binding provisions equivalent to those of EMIR.</i></p> <p>A Japanese CCP is not specifically required to disclose: (i) to the public, the volumes of cleared transactions for each class of instruments cleared, the operational and technical requirements relating to communication protocols used with third parties or any breaches by clearing members of its participation requirements, (ii) to clearing members, the price information used to calculate its end-of-day exposures to its Clearing Members.</p> <p>A Japanese CCP is not specifically required to allow clearing members and clients separate access to specific services it provides nor is it required to price each service separately.</p> <p>A Japanese CCP is not specifically required to inform clearing members and their clients of the risks associated with the services provided.</p>
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Segregation and portability	Segregation and portability	Segregation and portability
<p>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”).¹⁵²</p> <p>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 its assets and positions from the assets and positions held for the account of its Clients.</p> <p>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.¹⁵³</p> <p>CCPs and Clearing Members must publicly disclose the</p>	<p><i>Under the FIEA and the OTCO, CCPs are required to:</i></p> <ul style="list-style-type: none"> • Segregate the cash and securities from other assets held by the CCP With regard to cash and securities deposited by a clearing member for securing the performance of its obligations to a CCP.¹⁵⁸ <p>Set out in their Business Rules the way the CCP intends to hold and manage cash and securities deposited by a clearing member for securing the performance of its obligations to a CCP.¹⁵⁹</p>	<p><i>The Japanese regime for CCPs includes segregation and portability requirements. Based on a review of the legally binding requirements which are applicable, at a jurisdictional level, to CCPs in Japan, these requirements are not equivalent to those of EMIR. However, the internal policies, procedures, rules, models and methodologies of individual CCPs, which are out of the scope of this assessment, may contain legally binding provisions equivalent to those of EMIR.</i></p> <p>Japanese CCPs are subject to a single segregation regime (segregation of client assets from the assets of the CCP) and the EMIR concept of individual segregation does not feature, including with it, provisions such as the requirement for clearing members to pass excess margin to the CCP.</p> <p>A Japanese CCP 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.</p> <p>The Japanese regime does not specify the legal mechanism through which a CCP has the right to use margin or default fund contributions, or specifically require CCPs to publicly disclose a right of use with respect to margins or default fund contributions.</p>

levels of protection offered, including the costs and main legal implications (including information relating to treatment on insolvency) of each level of protection and must offer those services on reasonable commercial terms.¹⁵⁴

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).¹⁵⁵

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 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.¹⁵⁶

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.¹⁵⁷

<p>Exposure management</p> <p>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.¹⁶⁰</p>	<p>Exposure management</p> <p><i>Under the FIEA, a CCP is required to:</i></p> <ul style="list-style-type: none"> Specify in its Business Rules matters concerning securing the performance of obligations of clearing members.¹⁶¹ <p>As part of the approval process for licensing, demonstrate to the JFSA that the CCP has appropriate margining parameters and risk management framework.¹⁶²</p> <p>As part of the approval process for licensing, demonstrate to the JFSA that the CCP has a sufficient system for conducting clearing appropriately and with certainty including operating credible facilities in order to carry out clearing smoothly.¹⁶³</p> <p>As part of the approval process for licensing, demonstrate to the JFSA that the CCP has a risk management framework adopted by an executive committee of the CCP and that revisions of that risk management committee are subject to approval by the CCP’s executive committee.¹⁶⁴</p> <p>When reviewing an application for a license as a CCP, the JFSA will examine:</p> <p>(a) whether the applicant has established a sufficient structure and system for conducting clearing ap-</p>	<p>Exposure management</p> <p><i>The Japanese regime for CCPs includes exposure management requirements. Based on a review of the legally binding requirements which are applicable, at a jurisdictional level, to CCPs in Japan, these requirements are not equivalent to those of EMIR. However, the internal policies, procedures, rules, models and methodologies of individual CCPs, which are out of the scope of this assessment, may contain legally binding provisions equivalent to those of EMIR.</i></p> <p>A Japanese CCP is not specifically required to measure and assess its liquidity and credit exposures to its clearing members or to any CCP with which it has entered into interoperability arrangements.</p>
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	<p>appropriately and with certainty, such as obtaining appropriate collateral for clearing unsettled obligations and operating credible facilities in order to carry out clearing smoothly; and</p> <p>(b) whether the procedures specified in its Business Rules conform to applicable laws and regulations and are sufficient to conduct the clearing services appropriately and with certainty.¹⁶⁵</p>	
<p>Margin requirements</p> <p>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 exposures with all its Clearing Members and Interoperable CCPs, at least on a daily basis.¹⁶⁶</p> <p>CCPs should follow principles to adequately tailor their margin levels to the characteristics of each financial instrument or portfolio they clear.¹⁶⁷ 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.¹⁶⁸ 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</p>	<p>Margin requirements</p> <p><i>Under the FIEA, a CCP is required to:</i></p> <ul style="list-style-type: none"> Specify in its Business Rules matters concerning securing the performance of obligations of clearing members.¹⁸⁰ <p>When reviewing an application for a license as a CCP, the JFSA will examine:</p> <p>(a) whether the applicant has established a sufficient structure and system for conducting clearing appropriately and with certainty, such as obtaining appropriate collateral for clearing unsettled obligations and operating credible facilities in order to carry out clearing smoothly; and</p> <p>(b) whether the procedures specified in its Business Rules conform to applicable laws and regulations and are sufficient to conduct the clearing services appropriately and with certainty.¹⁸¹</p>	<p>Margin requirements</p> <p><i>The Japanese regime for CCPs includes margin requirements. Based on a review of the legally binding requirements which are applicable, at a jurisdictional level, to CCPs in Japan, these requirements are not equivalent to those of EMIR. However, the internal policies, procedures, rules, models and methodologies of individual CCPs, which are out of the scope of this assessment, may contain legally binding provisions equivalent to those of EMIR.</i></p> <p>A Japanese CCP is not specifically required to call and collect margins on an intraday basis when predefined thresholds are exceeded.</p> <p>A Japanese CCP is not specifically required to have its margin models reviewed and validated by a qualified and independent party, or by the Japanese authorities.</p> <p>When calculating initial margin, a Japanese CCP is</p>

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 19.¹⁶⁹

A CCP must call and collect 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.¹⁷⁰

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).¹⁷¹

- **Percentage.** When calculating IM, a CCP must use at least the following minimum confidence intervals: (i) for OTC derivatives, 99.5%; and (ii) for other financial instruments, 99%.¹⁷² 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 de-

- **Percentage.** As part of the approval process for licensing, demonstrate to the JFSA that the CCP has appropriate margining parameters and risk management framework.¹⁸²
- **Time horizon for the calculation of historical volatility.** As part of the approval process for licensing, demonstrate to the JFSA that the CCP has appropriate margining parameters and risk management framework.¹⁸³
- **Time horizons for the liquidation period.** As part of the approval process for licensing, demonstrate to the JFSA that the CCP has appropriate margining parameters and risk management framework.¹⁸⁴
- **Portfolio margining.** As part of the approval process for licensing, demonstrate to the JFSA that the CCP has appropriate margining parameters and risk management framework.¹⁸⁵
- **Procyclicality.** As part of the approval process for licensing, demonstrate to the JFSA that the CCP has appropriate margining parameters and risk management framework.¹⁸⁶

not required to use a specific confidence interval.

The Japanese regime does not specifically subject financial instruments to a criteria-based approach that could increase the required confidence level.

A Japanese CCP is not specifically required to calculate initial margin 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 Japanese regime does not specify minimum liquidation times based on the specific characteristics of particular products or portfolios.

A Japanese CCP is not required to have a theoretical basis or a statistical correlation for portfolio margining.

A Japanese CCP is not required to take into account the procyclical effects of revisions to their margin levels and a Japanese CCP 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 CCP is not affected.

<p>gree 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).¹⁷³</p> <p>However, CCPs may 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.¹⁷⁴</p> <p>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.</p> <ul style="list-style-type: none"> • <i>Time horizon for the calculation of historical volatility.</i> 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. 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.¹⁷⁵ • <i>Time horizons for the liquidation period.</i> The liquidation period used to calculate IM must be at least: (i) for OTC derivatives, 5 business days; and (ii) 		
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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).¹⁷⁶ However, CCPs may use 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.¹⁷⁷ 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 financial 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 demon-

<p>strates 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 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.¹⁷⁸</p> <ul style="list-style-type: none"> • 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 observations 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.¹⁷⁹ 		
<p>Default fund</p> <p>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</p>	<p>Default fund</p> <p><i>Under the FIEA, a CCP is required to:</i></p> <ul style="list-style-type: none"> • Specify in its Business Rules matters concerning securing the performance of obligations of clearing members.¹⁹³ 	<p>Default fund</p> <p><i>The Japanese regime for CCPs includes default fund requirements requirements. Based on a review of the legally binding requirements which are applicable, at a jurisdictional level, to CCPs in Japan, these requirements are not equivalent to</i></p>

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.¹⁸⁷

The default fund must enable to the CCP to withstand, under 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.¹⁸⁸ A CCP may establish more than one default fund for the different classes of financial instruments that it clears.¹⁸⁹

- **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.¹⁹⁰
- **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

When reviewing an application for a license as a CCP, the JFSA will examine:

- (a) whether the applicant has established a sufficient structure and system for conducting clearing appropriately and with certainty, such as obtaining appropriate collateral for clearing unsettled obligations and operating credible facilities in order to carry out clearing smoothly; and
- (b) whether the procedures specified in its Business Rules conform to applicable laws and regulations and are sufficient to conduct the clearing services appropriately and with certainty.¹⁹⁴
 - **Framework and governance.** As part of the approval process for licensing, demonstrate to the JFSA that the CCP has provisions regarding the securing the performance of obligations of clearing members.¹⁹⁵
 - **Identifying extreme but plausible market conditions.** As part of the approval process for licensing, demonstrate to the JFSA that the CCP has provisions regarding the securing the performance of obligations of clearing members.¹⁹⁶
 - **Reviewing extreme but plausible scenarios.** As part of the approval process for licensing, demonstrate to the JFSA that the CCP has provisions regarding the securing the performance of obligations of clearing mem-

those of EMIR. However, the internal policies, procedures, rules, models and methodologies of individual CCPs, which are out of the scope of this assessment, may contain legally binding provisions equivalent to those of EMIR.

A Japanese CCP is not specifically required to maintain pre-funded financial resources sufficient to meet its financial obligations to its clearing members notwithstanding a default by the clearing member creating the largest financial exposure for the CCP or 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.

A Japanese CCP is not specifically required to define the types of extreme but plausible market conditions that would expose it to the greatest risk or to perform stress testing that will allow it to make a reasonable calculation of the financial resources needed to meet its financial resources requirement.

The Japanese regime does not specifically require a CCP's board to annually or more frequently review its minimum financial resources framework.

<p>simultaneous failure of entities in the same group as the Defaulting Clearing Member;</p> <p>(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, 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.¹⁹¹</p> <ul style="list-style-type: none"> • 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.¹⁹² 	<p>bers.¹⁹⁷</p>	
<p>Other financial resources</p> <p>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 CCP</p>	<p>Other financial resources</p> <p><i>Under the FIEA, a CCP is required to:</i></p> <ul style="list-style-type: none"> • Specify in its Business Rules matters concerning securing the performance of obligations of clearing members.²⁰⁰ <p>When reviewing an application for a license as a CCP, the JFSA will examine:</p> <p>(a) whether the applicant has established a sufficient structure and system for conducting clearing ap-</p>	<p>Other financial resources</p> <p><i>The Japanese regime for CCPs includes other financial resources requirements. Based on a review of the legally binding requirements which are applicable, at a jurisdictional level, to CCPs in Japan, these requirements are not equivalent to those of EMIR. However, the internal policies, procedures, rules, models and methodologies of individual CCPs, which are out of the scope of this assessment, may contain legally binding provisions equivalent to those of EMIR.</i></p>

<p>and may not be used to meet a CCP's regulatory capital requirements under EMIR, Art. 16.¹⁹⁸</p> <p>A CCP may require a non-defaulting Clearing Member to provide additional funds in the event of a default of another Clearing Member. The Clearing Members of a CCP must have limited exposure to the CCP.¹⁹⁹</p>	<p>appropriately and with certainty, such as obtaining appropriate collateral for clearing unsettled obligations and operating credible facilities in order to carry out clearing smoothly; and</p> <p>(b) whether the procedures specified in its Business Rules conform to applicable laws and regulations and are sufficient to conduct the clearing services appropriately and with certainty.²⁰¹</p>	<p>A Japanese CCP is not specifically required to maintain pre-funded financial resources, freely available to the CCP and not used to meet regulatory capital requirements that are sufficient to cover the default of the two clearing members to which it has the largest exposure under extreme but plausible market conditions.</p> <p>Clearing members are not required to have limited exposure to a Japanese CCP.</p>
<p>Liquidity risk controls</p> <p>A CCP must at all times have access to adequate liquidity to perform its services and activities.²⁰² 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 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.²⁰³</p> <p>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.</p> <ul style="list-style-type: none"> • Assessment of liquidity risk. The framework should also include: (i) the assessment of potential fu- 	<p>Liquidity risk controls</p> <p><i>Under the FIEA, a CCP is required to:</i></p> <ul style="list-style-type: none"> • Specify in its Business Rules matters concerning securing the performance of obligations of clearing members.²⁰⁷ <p>When reviewing an application for a license as a CCP, the JFSA will examine:</p> <p>(a) whether the applicant has established a sufficient structure and system for conducting clearing appropriately and with certainty, such as obtaining appropriate collateral for clearing unsettled obligations and operating credible facilities in order to carry out clearing smoothly; and</p> <p>(b) whether the procedures specified in its Business Rules conform to applicable laws and regulations and are sufficient to conduct the clearing services appropriately and with certainty.²⁰⁸</p> <ul style="list-style-type: none"> • Assessment of liquidity risk. As part of 	<p>Liquidity risk controls</p> <p><i>The Japanese regime for CCPs includes liquidity risk control requirements. Based on a review of the legally binding requirements which are applicable, at a jurisdictional level, to CCPs in Japan, these requirements are not equivalent to those of EMIR. However, the internal policies, procedures, rules, models and methodologies of individual CCPs, which are out of the scope of this assessment, may contain legally binding provisions equivalent to those of EMIR.</i></p> <p>The Japanese regime does not specifically require CCPs to establish a 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.</p> <p>A Japanese CCP is not specifically required to assess the liquidity risk it faces where it or its</p>

<p>ture 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 default until the end of the liquidation period; and (ii) the liquidity risk generated by its investment policy in extreme but plausible conditions.²⁰⁴</p> <p>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.).</p> <p>The CCP should assess the liquidity risk it faces including where the CCP or its Clearing Members cannot settle their 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.</p> <ul style="list-style-type: none"> • 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 	<p>the approval process for licensing, demonstrate to the JFSA that the CCP has provisions regarding the securing the performance of obligations of clearing members.²⁰⁹</p> <ul style="list-style-type: none"> • Access to liquidity. As part of the approval process for licensing, demonstrate to the JFSA that the CCP has provisions regarding the securing the performance of obligations of clearing members.²¹⁰ • Concentration risk. As part of the approval process for licensing, demonstrate to the JFSA that the CCP has provisions regarding the securing the performance of obligations of clearing members.²¹¹ 	<p>clearing members cannot settle their payment obligations when due.</p> <p>A Japanese CCP is not specifically required to measure its liquidity needs by taking into account a default by the two clearing members to which it has the largest exposures.</p> <p>The Japanese regime does not specifically require a CCP to have a liquidity plan approved by the board after consultation with the risk committee.</p> <p>The Japanese regime does not specifically require a CCP to maintain, in each relevant currency, liquid resources commensurate with its liquidity requirements.</p> <p>A Japanese CCP is not specifically required to monitor the concentration of its liquidity risk exposure or to apply exposure or concentration limits.</p>
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<p>at authorised credit institutions; (iii) committed 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.²⁰⁵</p> <ul style="list-style-type: none"> • 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.²⁰⁶ 		
<p>Default waterfall</p> <p>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 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.²¹²</p> <ul style="list-style-type: none"> • 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 	<p>Default waterfall</p> <p><i>Under the FIEA, a CCP is required to:</i></p> <ul style="list-style-type: none"> • Specify in its Business Rules matters concerning securing the performance of obligations of clearing members.²¹⁵ <p>When reviewing an application for a license as a CCP, the JFSA will examine:</p> <p>(a) whether the applicant has established a sufficient structure and system for conducting clearing appropriately and with certainty, such as obtaining appropriate collateral for clearing unsettled obligations and operating credible facilities in order to carry out clearing smoothly; and</p> <p>(b) whether the procedures specified in its Business Rules conform to applicable laws and regulations and are sufficient to conduct the clearing services</p>	<p>Default waterfall</p> <p><i>The Japanese regime for CCPs includes default waterfall requirements. Based on a review of the legally binding requirements which are applicable, at a jurisdictional level, to CCPs in Japan, these requirements are not equivalent to those of EMIR. However, the internal policies, procedures, rules, models and methodologies of individual CCPs, which are out of the scope of this assessment, may contain legally binding provisions equivalent to those of EMIR.</i></p> <p>A Japanese CCP is not specifically required to apply the same default waterfall sequence as prescribed under EMIR for a CCP.</p> <p>A Japanese CCP 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.</p>

<p>minimum capital (including retained earnings and reserves) pursuant to EMIR, Art. 16.²¹³ 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.</p> <ul style="list-style-type: none"> • 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 measures to be taken to remedy the breach (which must be remedied within one month).²¹⁴ 	<p>appropriately and with certainty.²¹⁶</p> <ul style="list-style-type: none"> • Calculation of the amount of the CCP’s own resources to be used in the default waterfall. As part of the approval process for licensing, demonstrate to the JFSA that the CCP has provisions regarding the securing the performance of obligations of clearing members.²¹⁷ • Maintenance of the amount of the CCP’s own resources to be used in the default waterfall. As part of the approval process for licensing, demonstrate to the JFSA that the CCP has provisions regarding the securing the performance of obligations of clearing members.²¹⁸ 	<p>A Japanese CCP is not specifically required to inform the Japanese authorities if its financial resources fall below a certain amount.</p>
<p>Collateral requirements</p> <p>A CCP must only accept highly liquid collateral with minimal credit and market risk to cover initial and ongoing 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</p>	<p>Collateral requirements</p> <p><i>Under the FIEA, a CCP is required to:</i></p> <ul style="list-style-type: none"> • Specify in its Business Rules matters concerning securing the performance of obligations of clearing members.²²⁵ <p>When reviewing an application for a license as a CCP, the JFSA will examine:</p> <p>(a) whether the applicant has established a sufficient structure and system for conducting clearing ap-</p>	<p>Collateral requirements</p> <p><i>The Japanese regime for CCPs includes collateral requirements. Based on a review of the legally binding requirements which are applicable, at a jurisdictional level, to CCPs in Japan, these requirements are not equivalent to those of EMIR. However, the internal policies, procedures, rules, models and methodologies of individual CCPs, which are out of the scope of this assessment, may contain legally binding provisions equivalent to those of EMIR.</i></p>

may follow the default of a market participant and the concentration risk on certain assets.²¹⁹

- **General policies and valuing collateral.** A 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 able to demonstrate to the competent authorities that it is able to manage the risks.²²⁰
- **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.²²¹
- **Financial instruments, bank guarantees and gold.** A criteria-based approach should be followed to determine other types of assets that can be considered

appropriately and with certainty, such as obtaining appropriate collateral for clearing unsettled obligations and operating credible facilities in order to carry out clearing smoothly; and

(b) whether the procedures specified in its Business Rules conform to applicable laws and regulations and are sufficient to conduct the clearing services appropriately and with certainty.²²⁶

- **General policies and valuing collateral.** The FIEA requires a CCP to specify matters concerning eligible collateral in its Business Rules.²²⁷
- **Cash collateral.** Collateral is required to be limited to cash and other securities which are specified by such CCP's Business Rules.²²⁸
- **Financial instruments, bank guarantees and gold.** Collateral is required to be limited to cash and other securities which are specified by such CCP's Business Rules.²²⁹.
- **Haircuts.** As part of the approval process for licensing, demonstrate to the JFSA that the CCP has provisions regarding the securing the performance of obligations of clearing members.²³⁰
- **Concentration limits.** As part of the approval process for licensing, demonstrate to the JFSA that the CCP has provisions regard-

A Japanese CCP is not specifically required to accept only highly liquid collateral and the Japanese 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.

The Japanese regime does not specifically address whether CCPs may accept as collateral the underlying asset of a derivative contract or the financial instrument that generates the CCP exposure.

The Japanese regime does not specifically require CCPs to establish and implement transparent policies to assess and monitor the liquidity of assets accepted as collateral or to take remedial action where appropriate.

A Japanese CCP is not required to monitor on a near to real time basis the credit quality, market liquidity and price volatility of each asset accepted as collateral.

A Japanese CCP is not specifically required to demonstrate to the Japanese authorities that haircuts are calculated in a conservative manner to limit as far as possible procyclical effects.

The Japanese regime does not specifically require a CCP to establish and implement policies to ensure that collateral remains sufficiently diversified to allow its liquidation within a defined holding period.

A Japanese CCP is also not specifically required to

<p>highly liquid (including financial instruments, bank guarantees, and gold). There is no requirement for a minimum amount of collateral to be in cash.²²²</p> <ul style="list-style-type: none"> • 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 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.²²³ • 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 	<p>ing the securing the performance of obligations of clearing members.²³¹</p>	<p>establish concentration limits for collateral.</p>
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<p>exceeded.</p> <p>A CCP must determine concentration limits at the levels of individual issuers, types of issuer, 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 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.²²⁴</p>		
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<p>Investment policy</p> <p>A CCP's investments must be capable of being liquidated rapidly with minimal adverse price effect. Capital not 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).</p> <p>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.²³²</p> <ul style="list-style-type: none"> • 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 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.²³³ • Highly secured arrangements for the deposit of financial instruments. Financial instruments 	<p>Investment policy</p> <p>Under the FIEA, a CCP is required to:</p> <ul style="list-style-type: none"> • Specify in its Business Rules matters concerning securing the performance of obligations of clearing members.²³⁹ <p>When reviewing an application for a license as a CCP, the JFSA will examine:</p> <p>(a) whether the applicant has established a sufficient structure and system for conducting clearing appropriately and with certainty, such as obtaining appropriate collateral for clearing unsettled obligations and operating credible facilities in order to carry out clearing smoothly; and</p> <p>(b) whether the procedures specified in its Business Rules conform to applicable laws and regulations and are sufficient to conduct the clearing services appropriately and with certainty.²⁴⁰</p> <ul style="list-style-type: none"> • Highly liquid financial instruments. As part of the approval process for licensing, demonstrate to the JFSA that the CCP has provisions regarding the managing of the default fund, margins and general collateral.²⁴¹ • Highly secured arrangements for the deposit of financial instruments. As part of the approval process for licensing, demonstrate to the JFSA that the CCP has provisions regarding the managing of the default fund, 	<p>Investment policy</p> <p>The Japanese regime for CCPs includes investment policy requirements. Based on a review of the legally binding requirements which are applicable, at a jurisdictional level, to CCPs in Japan, these requirements are not equivalent to those of EMIR. However, the internal policies, procedures, rules, models and methodologies of individual CCPs, which are out of the scope of this assessment, may contain legally binding provisions equivalent to those of EMIR.</p> <p>A Japanese CCP regime is not specifically required to invest only in highly liquid assets and the Japanese regime does not specify the types of financial instrument that are deemed highly liquid or a criteria-based approach to determine whether assets are highly liquid. The Japanese regime does not specifically prohibit a CCP from investing its capital in its own securities.</p> <p>The Japanese regime does not specifically require CCPs to deposit financial instruments posted at the CCP as margin or default fund contributions with operators of securities settlement systems that ensure the full protection of such financial instruments.</p> <p>The Japanese regime does not specifically require CCPs to deposit cash posted at the CCP as margin or default fund contributions with a central bank or through highly secure arrangements.</p> <p>When a CCP deposits assets with a third party, the</p>
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<p>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 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).²³⁴</p> <ul style="list-style-type: none"> • 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 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 45²³⁵. <p>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</p>	<p>margins and general collateral.²⁴²</p> <ul style="list-style-type: none"> • Highly secured arrangements for maintaining cash. As part of the approval process for licensing, demonstrate to the JFSA that the CCP has provisions regarding the managing of the default fund, margins and general collateral.²⁴³ • Concentration limits. As part of the approval process for licensing, demonstrate to the JFSA that the CCP has provisions regarding the managing of the default fund, margins and general collateral.²⁴⁴ 	<p>Japanese regime does not specifically require the CCP to ensure that assets belonging to clearing members are identifiable separately from the assets belonging to the CCP and from assets belonging to a third party.</p> <p>A CCP 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.</p> <p>CCPs in Japan are not explicitly required to deposit cash with central banks or to collateralise 95% of the cash maintained with commercial banks.</p> <p>No restriction comparable to the one in the EU regime has been found with respect to the investment in derivatives.</p>
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<p>instruments when required.²³⁶</p> <ul style="list-style-type: none"> <p>Concentration limits. A CCP must take into account its overall credit risk exposures to individual obligors in making its investment decisions and must ensure that its overall risk exposure to any individual obligor remains within acceptable concentration limits.²³⁷ 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 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.²³⁸</p> 		
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<p>Default procedures</p> <p>A CCP must have detailed procedures in place to be followed where a Clearing Member does not comply with 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.²⁴⁵</p> <p>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.²⁴⁶</p> <p>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 to ESMA, to the relevant members of the ESCB and to the authority responsible for the supervision of the defaulting Clearing Member.²⁴⁷</p> <p>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.²⁴⁸</p> <p>Where a CCP keeps records and accounts for a Clearing</p>	<p>Default procedures</p> <p><i>Under the FIEA, a CCP is required to:</i></p> <ul style="list-style-type: none"> Specify in its Business Rules matters concerning securing the performance of obligations of clearing members.²⁵² <p>When reviewing an application for a license as a CCP, the JFSA will examine:</p> <p>(a) whether the applicant has established a sufficient structure and system for conducting clearing appropriately and with certainty, such as obtaining appropriate collateral for clearing unsettled obligations and operating credible facilities in order to carry out clearing smoothly; and</p> <p>(b) whether the procedures specified in its Business Rules conform to applicable laws and regulations and are sufficient to conduct the clearing services appropriately and with certainty.²⁵³</p> <p>The FIEA provides that a CCP shall have the right to be compensated from the clearing deposit of a defaulting clearing member in preference to other creditors.²⁵⁴</p> <p>When considering an application for a license, the JFSA will examine whether the applicant CCP has established a sufficient structure and system for conducting clearing appropriately and with certainty. Where a CCP stipulates, in its Business Rules, a method of deduction, a method of appropriating security</p>	<p>Default procedures</p> <p><i>The Japanese regime for CCPs includes default procedure requirements. Based on a review of the legally binding requirements which are applicable, at a jurisdictional level, to CCPs in Japan, these requirements are not equivalent to those of EMIR. However, the internal policies, procedures, rules, models and methodologies of individual CCPs, which are out of the scope of this assessment, may contain legally binding provisions equivalent to those of EMIR.</i></p> <p>A Japanese CCP 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 CCP.</p> <p>A Japanese CCP is not expressly required to inform the Japanese authorities when it considers that a clearing member will not be able to meet its future obligations.</p> <p>A Japanese CCP is not required to verify that its default procedures are enforceable.</p> <p>EMIR contains provisions which contemplate the transfer of client positions upon a clearing member default based on the type of segregation, whereas the Japanese regime does not address the transfer of client positions.</p>
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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, 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.²⁴⁹
- 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 relevant 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, in-

and other methods of settlement with regard to unsettled obligations, if special liquidation proceedings, bankruptcy proceedings, rehabilitation proceedings or reorganization proceedings are commenced in relation to a clearing member, then calculation of the amount of claims which the CCP or the clearing member has with regards to unsettled obligations and other methods of settlement in relation to such proceedings, shall be conducted in accordance with the provisions of the Business Rules.²⁵⁵

<p>cluding liquidating the assets and positions held by the Defaulting Clearing Member for the Client.²⁵⁰</p> <p>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 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).²⁵¹</p>		
<p>Review of models, stress testing and back testing</p> <ul style="list-style-type: none"> • 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 revisions 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 	<p>Review of models, stress testing and back testing</p> <p><i>Under the FIEA, a CCP is required to:</i></p> <ul style="list-style-type: none"> • Specify in its Business Rules matters concerning securing the performance of obligations of clearing members.²⁶⁶ <p>When reviewing an application for a license as a CCP, the JFSA will examine:</p> <p>(a) whether the applicant has established a sufficient structure and system for conducting clearing appropriately and with certainty, such as obtaining appropriate collateral for clearing unsettled obligations and operating credible facilities in order to carry out clearing smoothly; and</p> <p>(b) whether the procedures specified in its Business Rules conform to applicable laws and regulations</p>	<p>Review of models, stress testing and back testing</p> <p><i>The Japanese regime for CCPs 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 CCPs in Japan, these requirements are not equivalent to those of EMIR. However, the internal policies, procedures, rules, models and methodologies of individual CCPs, which are out of the scope of this assessment, may contain legally binding provisions equivalent to those of EMIR.</i></p> <p>A Japanese CCP is not specifically 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</p>

<p>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.²⁵⁶</p> <ul style="list-style-type: none"> • 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 comparison 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.²⁵⁷ • 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.²⁵⁸ 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 committee. • 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 	<p>and are sufficient to conduct the clearing services appropriately and with certainty.²⁶⁷</p> <ul style="list-style-type: none"> • Model validation and testing programmes. As part of the approval process for licensing, demonstrate to the JFSA that the CCP has provisions regarding the securing the performance of obligations of clearing members.²⁶⁸ • Back testing. As part of the approval process for licensing, demonstrate to the JFSA that the CCP has provisions regarding the securing the performance of obligations of clearing members.²⁶⁹ • Sensitivity testing and analysis. As part of the approval process for licensing, demonstrate to the JFSA that the CCP has provisions regarding the securing the performance of obligations of clearing members.²⁷⁰ • Stress testing. As part of the approval process for licensing, demonstrate to the JFSA that the CCP has provisions regarding the securing the performance of obligations of clearing members.²⁷¹ • Review of models using test results. As part of the approval process for licensing, demonstrate to the JFSA that the CCP has provisions regarding the securing the performance of obligations of clearing members.²⁷² • Reverse stress tests. As part of the approv- 	<p>committee or clearing members.</p> <p>A Japanese CCP is not specifically required to analyse its financial resources coverage by conducting stress tests at least daily.</p> <p>A Japanese CCP 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.</p> <p>A Japanese CCP 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 modeling extreme market conditions beyond what is considered plausible.</p> <p>A Japanese CCP is not required to test its collateral haircut policies at least monthly.</p> <p>The Japanese regime does not specifically require a CCP to validate its liquidity risk management frameworks, valuation models, correlation performance in relation to portfolio margining, or testing results.</p> <p>The Japanese regime does not require CCPs to review its models for default fund contributions or to regularly test key aspects of default procedures.</p> <p>A Japanese CCP is not specifically required to</p>
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<p>are sufficient²⁵⁹.</p> <ul style="list-style-type: none"> • 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 imposes²⁶⁰. • 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 them²⁶¹. • Reverse stress tests. A CCP must have in place a reverse stress testing programme designed to identify 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.²⁶² • 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.²⁶³ • Frequency. A CCP must conduct a comprehen- 	<p>al process for licensing, demonstrate to the JFSA that the CCP has provisions regarding the securing the performance of obligations of clearing members.²⁷³</p> <ul style="list-style-type: none"> • Testing default procedures. As part of the approval process for licensing, demonstrate to the JFSA that the CCP has provisions regarding the securing the performance of obligations of clearing members.²⁷⁴ • Frequency. As part of the approval process for licensing, demonstrate to the JFSA that the CCP has provisions regarding the securing the performance of obligations of clearing members.²⁷⁵ • Information to be publicly disclosed. As part of the approval process for licensing, demonstrate to the JFSA that the CCP has provisions regarding the securing the performance of obligations of clearing members.²⁷⁶ 	<p>publicly disclose the general principles underlying its models and their methodologies, its margin-setting methodology, the nature of tests performed, a high level summary of the test results and any corrective actions undertaken or key aspects of its default procedures.</p>
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<p>sive 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 unusually 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.²⁶⁴</p> <ul style="list-style-type: none"> • 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) mecha- 		
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<p>nisms to help address the Defaulting Clearing Member's obligations to its Clients.²⁶⁵</p>		
<p>Settlement</p> <ul style="list-style-type: none"> • 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.²⁷⁷ • 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.²⁷⁸ • Settlement finality rules also apply in accordance with the Settlement Finality Directive²⁷⁹. 	<p>Settlement</p> <ul style="list-style-type: none"> • Cash settlement risk. No corresponding provisions. • Securities settlement risk. No corresponding provisions. 	<p>Settlement</p> <p><i>The Japanese regime for CCPs does not include settlement requirements that are legally binding at a jurisdictional level. However, the internal policies, procedures, rules, models and methodologies of individual CCPs, which are out of the scope of this assessment, may contain legally binding provisions equivalent to those of EMIR.</i></p> <p>A Japanese CCP is not specifically required to use central bank money where practical and available to settle its transactions.</p> <p>A Japanese CCP is not specifically required to clearly state its obligations with regard to deliveries of financial instruments or to eliminate principal risk through the use of delivery-versus-payment mechanisms to the extent possible when it has an obligation to make or receive delivery of financial instruments.</p>



ANNEX IV – 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 Japanese provisions	Assessment of Equivalence
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Description of the EMIR provisions on OTC derivatives	Description of the corresponding Japanese provisions	Assessment of Equivalence
A. Clearing obligation (Article 4)		
<p>Parties subject to the clearing obligation</p> <p>The Clearing Obligation applies to OTC derivative contracts entered into between:</p> <ul style="list-style-type: none"> (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. 	<p>Parties subject to the clearing obligation</p> <p>The clearing obligations under Article 156-62(1) and (2) of the FIEA currently apply only where both parties to the OTC derivatives transaction are Financial Instruments Business Operators that are clearing members or the parent companies or subsidiaries of Clearing Members in the same CCP.²⁸⁰</p> <p>As explained in more detail in section 1.3 below, the current rules are only the first phase of regulation. In this first phase, clearing obligations extend only to Financial Instruments Business Operators (such as dealers) which frequently trade in high volumes, with large notional amounts and with the operational capabilities to provide fair and transparent pricing to a CCP.²⁸¹</p> <p>This effectively means that those entities who do not satisfy the qualification requirements to be Clearing Members as specified by CCPs in their "Business Rules" are excluded from the application of the clearing obligations under the first phase of regulation.²⁸²</p> <p>Financial Instruments Business Operators who do not satisfy such criteria will be considered to have a "rea-</p>	<p>The Japanese regime is developing a process in two phases: first for dealers and then for other financials. The EU is not making such distinction.</p> <p>In the Japanese regime, only financials that can become direct clearing members are captured by the clearing obligation in the first phase. If there is no direct clearing possibility, the clearing obligation does not apply to that financial.</p> <p>While in the EU non-hedging transactions can subject a non-financial to clearing all its derivatives subject to the clearing obligation including hedging contracts (when going above the threshold), in Japan all non -financials (irrespective of the purpose of the transaction) are exempted from the clearing obligation.</p> <p>The Japanese regime includes requirements that are limited compared to the EU regime which is broader.</p>

Description of the EMIR provisions on OTC derivatives	Description of the corresponding Japanese provisions	Assessment of Equivalence
	<p>sonable reason for not becoming a Clearing Member" and as such will fall within the exemption described in section 3 below. ²⁸³</p> <p>The scope of entities subject to the clearing obligations is expected to be expanded to other Financial Instruments Business Operators who carry risk due to the size and balance of their OTC derivatives transactions during the second phase of regulation (which is scheduled to be rolled out during the next two years) once the environment for clearing intermediaries has been developed. ²⁸⁴</p> <p>On the basis of the exemptions analysed later in the table, the scope of persons subject to the clearing obligation can be summarized as:</p> <ul style="list-style-type: none"> (a) both of the parties to the transaction are a Financial Business Operator; and (b) both of the parties (or their parent companies or subsidiaries specified by the FIEA) to the transaction are Clearing Members of the relevant CCP. 	

Description of the EMIR provisions on OTC derivatives	Description of the corresponding Japanese provisions	Assessment of Equivalence
<p>Contracts subject to the clearing obligation</p> <p>The Clearing Obligation applies to all OTC derivative contracts pertaining to a class of OTC derivatives that has been declared subject to the Clearing Obligation.</p> <p>No determinations have been taken so far.</p>	<p>Contracts subject to the clearing obligation</p> <p>Under the current rules, only those transactions described in points (a) or (b) below are subject to the clearing obligations. The JFSA has confirmed through their responses to public comments that they will expand this list as appropriate to reflect market conditions/developments by amending the OTC Derivatives Ordinance and the Public Notice (<i>kokuji</i>):</p> <ul style="list-style-type: none"> (a) all OTC derivatives and other transactions specified by cabinet ordinance which, due to their size or other characteristics, may materially affect the stability of the Japanese financial markets should the obligations of the parties not be performed and would need to be cleared in Japan due to their characteristics. These transactions must be cleared through a Domestic CCP.²⁸⁵ (i) The OTC Derivatives Ordinance currently provides that the subject transactions are CDS transactions specified by the Commissioner of the JFSA which reference two or more Japanese corporations.²⁸⁶ 	<p>In the Japanese regime, the first determinations have already been adopted: iTRAXX CDS and JPY IRS. In the EU regime, the process has not started yet. The Japanese regime includes requirements that are ahead of the EU on the determination.</p>

Description of the EMIR provisions on OTC derivatives	Description of the corresponding Japanese provisions	Assessment of Equivalence
	<p>The Commissioner of the JFSA has through the Public Notice (<i>kokuji</i>) specified that only CDS referencing iTraxx Japan 50 which can be cleared through the Japan Securities Clearing Corporation (JCCC) are currently subject to the clearing obligations.²⁸⁷</p> <p>(b) all OTC derivatives and other transactions specified by cabinet ordinance which, due to their size or other characteristics, may materially affect the stability of the Japanese financial markets should the obligations of the parties not be performed. These transactions must be cleared either through a Domestic CCP, a Foreign CCP or a Joint CCP Platform.²⁸⁸</p> <p>(i) The OTC Derivatives Ordinance currently provides that the subject transactions are plain vanilla JPY denominated interest rate swap transactions specified by the Commissioner of the JFSA.²⁸⁹</p> <p>(ii) The Commissioner of the JFSA has through the Public Notice (<i>kokuji</i>) specified that only plain vanilla interest rate</p>	

Description of the EMIR provisions on OTC derivatives	Description of the corresponding Japanese provisions	Assessment of Equivalence
	<p>swaps referencing 3-month or 6-month JPY LIBOR which can be cleared through the Japan Securities Clearing Corporation (JCCC) are currently subject to the clearing obligations.²⁹⁰</p>	
<p><i>Date of effect of the clearing obligation</i></p> <p>EMIR entered into force on 16 August 2012. However the Clearing Obligation requires technical standards to be developed by ESMA on specific classes of derivatives and the actual date of application of the Clearing Obligation will depend on the date of entry into force of the technical standards.</p> <p>Before the Clearing Obligation can take effect, CCPs must be authorised for the purposes of EMIR.</p>	<p><i>Date of effect of the clearing obligation</i></p> <p>The OTC Derivatives Ordinance became effective on 1 November 2012 and only those transactions described in the previous section that are entered into on or after that date are subject to the clearing obligations.²⁹¹</p>	<p>The Japanese regime is ahead on the date of effect of the clearing obligation.</p> <p>The first clearing obligations became applicable in Nov 2012, while in Europe the process has not started yet.</p>
<p><i>Public Register</i></p> <p>ESMA shall establish, maintain and keep up to date a public register in order to identify the classes of OTC derivatives subject to the Clearing Obligation correctly and unequivocally. The public register shall be available on ESMA's website.</p>	<p><i>Public Disclosure of the classes subject to the clearing obligation</i></p> <p>The classes of OTC derivatives transactions subject to the clearing obligations are stipulated by the FIEA to be further specified by cabinet office ordinance.²⁹²</p> <p>The OTC Derivatives Ordinance, which was enacted</p>	<p>The Japanese regime includes requirements that are broadly equivalent to those of the EU regime for the type of disclosure.</p>

Description of the EMIR provisions on OTC derivatives	Description of the corresponding Japanese provisions	Assessment of Equivalence
<p>1. The public register shall include for each class of OTC derivative contracts subject to the clearing obligation:</p> <ul style="list-style-type: none"> (a) the asset class of OTC derivative contracts; (b) the type of OTC derivative contracts within the class; (c) the underlying(s) of OTC derivative contracts within the class; (d) for underlyings which are financial instruments, an indication of whether the underlying is a single financial instrument or issuer or an index or portfolio; (e) for other underlyings an indication of the category of the underlying; (f) the notional and settlement currencies of OTC derivative contracts within the class; (g) the range of maturities of OTC derivative contracts within the class; (h) the settlement conditions of OTC derivative contracts within the class; (i) the range of payment frequency of OTC derivative contracts within the class; (j) the product identifier of the relevant class 	<p>and can be amended by the Commissioner of the JFSA pursuant to the National Government Organization Act (Act No. 120 of 1948), currently provides that the subject transactions are (i) CDS transactions referencing two or more Japanese corporations and (ii) plain vanilla JPY denominated interest rate swaps, in each case which are specified by the Commissioner of the JFSA through public notice (<i>kokuji</i>).²⁹³</p> <p>Currently, CDS referencing iTraxx Japan 50 and plain vanilla interest rate swaps referencing 3-month or 6-month JPY LIBOR have been specified by the Commissioner of the JFSA as being subject to the clearing obligations as provided in the Public Notice.</p> <p>When the Commissioner of the JFSA determines that additional classes of transaction should be subject to clearing obligations, such determination is published by way of amending and publishing the Public Notice in the official gazette (<i>kanpo</i>) pursuant to the National Government Organization Act (with amendment of the OTC Derivatives Ordinance when necessary). The content of any such determination will also be posted on the website of the JFSA.</p>	

Description of the EMIR provisions on OTC derivatives	Description of the corresponding Japanese provisions	Assessment of Equivalence
<p>of OTC derivative contracts;</p> <p>(k) any other characteristic required to distinguish one contract in the relevant class of OTC derivative contracts from another.</p> <p>2. In relation to CCPs that are authorised or recognised for the purpose of the clearing obligation, the public register shall include for each CCP:</p> <p>(a) the identification code, in accordance with Article 3 of Regulation (EC) No xx/2012 [Commission Regulation endorsing draft implementing technical standards on format of reporting to trade repositories];</p> <p>(b) the full name;</p> <p>(c) the country of establishment;</p> <p>(d) the competent authority designated in accordance with Article 22 of Regulation (EU) No 648/2012.</p> <p>3. In relation to the dates from which the clearing obligation takes effect, including any phased-in implementation, the public register shall include:</p> <p>(a) the identification of the categories of counterparties to which each phase-in</p>		

Description of the EMIR provisions on OTC derivatives	Description of the corresponding Japanese provisions	Assessment of Equivalence
<p>period applies;</p> <p>(b) any other condition required pursuant to the regulatory technical standards adopted under Article 5(2) of Regulation (EU) No 648/2012, in order for the phase-in period to apply.</p> <p>4. The public register shall include the reference of the regulatory technical standards adopted under Article 5(2) of Regulation (EU) No 648/2012, according to which each clearing obligation was established.</p> <p>5. In relation to the CCP that has been notified to ESMA by the competent authority, the public register shall include at least:</p> <p>(a) the identification of the CCP;</p> <p>(b) the asset class of OTC derivative contracts that are notified;</p> <p>(c) the type of OTC derivative contracts;</p> <p>(d) the date of the notification;</p> <p>(e) the identification of the notifying competent authority.</p>		

Description of the EMIR provisions on OTC derivatives	Description of the corresponding Japanese provisions	Assessment of Equivalence
<p><i>Intragroup transaction exemption.</i></p> <p>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.</p>	<p><i>Intragroup transaction exemption</i></p> <p><u>Exempted transactions:</u></p> <ul style="list-style-type: none"> - a transaction within a group (i.e. a transaction between a Financial Instruments Business Operator and any of its parent company, subsidiaries and subsidiaries of a parent company as specified by the FIEA);²⁹⁴ - a transaction where either or both of the parties, or their parent companies or subsidiaries as specified by the FIEA, are not Clearing Members of the relevant CCP at which the transaction is to be cleared, provided that the party (including its parent company and subsidiaries) has reasonable grounds for not being a Clearing Member of the CCP;²⁹⁵ 	<p>It should be noted that given the limited scope of application of the clearing obligation, the exemptions to the clearing obligation are also limited. In particular, in the Japanese regime, exemptions relate to transactions within a group of a Financial Business Operator with direct access to a CCP.</p> <p>Furthermore, 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. If the intragroup transaction is concluded with an entity of the group that is established in a country that is not equivalent, such a transaction cannot be exempted. In Japan there is no evidence of such a limitation, which would result in a broader application of the exemption.</p> <p>The Japanese regime on intra group exemption includes requirements that are broadly equivalent to those of the EU regime.</p>

Description of the EMIR provisions on OTC derivatives	Description of the corresponding Japanese provisions	Assessment of Equivalence
<p><i>Definition of intragroup transactions (the “Intragroup Transactions”).</i></p> <p><i>In relation to a non-financial counterparty:</i> 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”).</p> <p><i>In relation to a financial counterparty:</i> an Intragroup Transaction is:</p> <p>(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 are included in the same consolidation on a full basis; and (iv) both counterparties are subject</p>		

Description of the EMIR provisions on OTC derivatives	Description of the corresponding Japanese provisions	Assessment of Equivalence
<p>to appropriate centralized risk evaluation, measurement and control procedures; or</p> <p>(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</p> <p>(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</p> <p>(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 is established in the Union or in a Recognized Third Country.</p>		
<p><i>Scope of the Clearing Obligation Intragroup Transaction Exemption.</i></p> <p>The Clearing Obligation Intragroup Transaction Exemption</p>		

Description of the EMIR provisions on OTC derivatives	Description of the corresponding Japanese provisions	Assessment of Equivalence
<p>applies only:</p> <p>(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</p> <p>to OTC derivative contracts between two counterparties belonging to the same group 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.</p>		

Description of the EMIR provisions on OTC derivatives	Description of the corresponding Japanese provisions	Assessment of Equivalence
The Competent Authority must notify ESMA of that decision.		
<p><i>Pension funds Exemption</i></p> <p>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.</p>	<p><i>Pension funds Exemption</i></p> <p>Although not explicitly exempted pension funds will be exempted <i>de facto</i> by not becoming direct clearing members.</p> <p>In addition, a transaction which is entered into on behalf of a trust account (including on behalf of a pension fund structured as or transacting through a trust) is exempted.</p>	The Japanese regime related to pension funds exemption contains requirements that are broadly equivalent in substance to those of the EU regime.
<p><i>Exception for Sovereigns</i></p> <ul style="list-style-type: none"> • 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). 	<p><i>Exception for Sovereigns</i></p> <p>A transaction where one of the parties is not a Financial Business Operator is exempted. This would exclude transactions with sovereigns and non-financial counterparties.</p>	The Japanese regime related to exception for sovereigns contains requirements that are broadly equivalent in substance to those of the EU regime.
	<p><i>Other exemptions</i></p> <p><u>Exempted transactions:</u></p> <p>- cases designated by the Commissioner of the</p>	<p>Those cases are not envisaged in the EU legislation and should not be recognised.</p> <p>The Japanese regime related to other exemptions does not contain requirements that are equivalent to</p>

Description of the EMIR provisions on OTC derivatives	Description of the corresponding Japanese provisions	Assessment of Equivalence
	<i>JFSA as having special circumstances where it is considered to be inappropriate to have the CCP assume the obligations under the transaction.</i>	those of the EU regime
<p><i>Procedure for applying the clearing obligation</i></p> <p><u>Bottom-up approach</u>: the competent authority authorising a CCP to clear a class of OTC derivatives shall immediately notify ESMA. The notification shall include:</p> <ul style="list-style-type: none"> (a) the identification of the class of OTC derivative contracts; (b) the identification of the OTC derivative contracts within the class of OTC 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 	<p><i>Procedure for applying the clearing obligation</i></p> <p>Only top-down approach as describe on top of the table.</p>	<p>As explained above, although the process is not equivalent the effect on the classes of derivatives subject to the clearing obligation can be similar. Therefore the absence of equivalent requirements in the Japanese regime in this respect should not prejudice the entire equivalence process.</p>

Description of the EMIR provisions on OTC derivatives	Description of the corresponding Japanese provisions	Assessment of Equivalence
<p>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:</p> <ul style="list-style-type: none"> (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 under stressed market conditions; and (vii) the measures of liquidity for the execution of default procedures.; <p>(g) evidence of availability to market participants of fair, reliable and generally accepted pricing information for contracts in the class of OTC derivative contracts;</p> <p>(h) evidence of the impact of the clearing obligation on availability to market participants of pricing information.</p> <p>(i) data relevant for assessing the expected volume of the class of OTC derivative contracts if it becomes subject to the clearing obligation;</p> <p>(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</p>		

Description of the EMIR provisions on OTC derivatives	Description of the corresponding Japanese provisions	Assessment of Equivalence
<p>manage the risk arising from the clearing of the relevant class of OTC derivative contracts, including through client or indirect client clearing arrangements;</p> <p>(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;</p> <p>(l) an outline of the different tasks to be completed in order to start clearing with the CCP, together with the determination of the time required to fulfil each task;</p> <p>(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.</p> <p>Within 6 months of receiving the notification, ESMA must issue draft regulatory technical standards, for adoption by the Commission, specifying:</p> <p>(i) the class of OTC derivatives that should be subject to the Clearing Obligation;</p> <p>(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</p>		

Description of the EMIR provisions on OTC derivatives	Description of the corresponding Japanese provisions	Assessment of Equivalence
<p>(iii) the minimum remaining maturity (the “Minimum Remaining Maturity”) of the OTC derivative contracts entered into or novated after the notification, which, despite being entered into before the Clearing Obligation Effective Date, shall be subject to the Clearing Obligation.</p>		
<p><u>Top-down approach</u></p> <p>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.</p> <p>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.</p>	<p><u>Top-down approach</u></p> <p>As outlined on top of this table the Japanese approach is top-down oriented. When the JFSA makes clearing determination, the JFSA takes account various factors such as the degree of standardization, scale of transactions, and clearing service provided by a CCP.</p>	<p>The EU regime specifies in more details the elements that ESMA should consider in its assessment, but the process and the general characteristics of the instruments to be cleared are similar.</p> <p>The Japanese regime contains requirements that are broadly equivalent to those of the EU regime.</p>



<p>Arrangements to clear</p> <p><u>Principle.</u> The OTC derivative contracts that are subject to the Clearing Obligation 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.</p> <p>For purposes of the Clearing Obligation, a counterparty must:</p> <ul style="list-style-type: none">(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.	<p>No corresponding rule in view of the different application</p> <p>The clearing obligation applies only to direct clearing members</p>	<p>The Japanese regime does not contain requirements that are equivalent to those of the EU regime.</p>
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B. Non-financial counterparties (Article 10)

<p><i>Treatment of non-financial counterparties</i></p> <p>Non-financial counterparties are subject to the clearing obligation if the rolling average position over 30 days exceed the clearing threshold.</p> <p>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 interest rate, fx, commodities and other OTC derivatives.</p>	<p><i>Treatment of non-financial counterparties.</i></p> <p><u>Exempted transactions:</u></p> <ul style="list-style-type: none"> - a transaction where one of the parties is not a Financial Business Operator; 	<p>All NFC would be exempted under the Japanese regime. The Japanese regime does not contain requirements that are equivalent to those of the EU regime.</p>
<p><i>Hedging Activity.</i></p> <p><i>Principle.</i> 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).²⁹⁶</p>	<p><i>No corresponding rule in view of the different application</i></p>	<p>The Japanese regime does not contain requirements that are equivalent to those of the EU regime.</p>
<p><i>Definition of Hedging Contracts.</i></p> <p>An OTC derivative contract is objectively measurable as reducing risks directly relating to the commercial activity or treasury financing activity of the non-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:</p> <ul style="list-style-type: none"> b) it covers the risks arising from the potential change in the value of assets, services, inputs, products, 		

<p>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;</p> <p>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;</p> <p>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.</p> <ul style="list-style-type: none"> - 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; 		
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- OTC derivative contracts related to credit risk fall within the scope of Hedging Contracts.		
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C. Timely Confirmation (Article 11(1)(a))

	<p>No corresponding rule</p> <p>Subject to the following, there are no specific provisions in current Japanese law or regulation which mandate risk mitigation techniques applicable to non-cleared OTC derivative contracts.</p> <p>If a party to a non-cleared OTC derivative contract is a Financial Business Operator, through the general supervisory regime provided under the FIEA and the "Comprehensive Guidelines for Supervision of Financial Instruments Business Operators, etc.", the JFSA will periodically review the soundness of that Financial Business Operator's business operation (including record keeping for transactions) and its financial condition (including capital adequacy ratio; and management of (i) market risk, (ii) counterparty risk and (iii) liquidity risk).</p> <p>This review could extend to a review of exchange of collateral, timely confirmation, portfolio reconciliation, dispute resolution, monitoring of the value of outstanding OTC derivatives and daily mark-to-market in relation to non-cleared OTC derivative contracts. These could also be items covered by an inspection by the SESC/Finance Bureau as delegated by the JFSA.</p>	<p>The rules on risk mitigation techniques have not been developed yet by the Japanese authorities.</p> <p>However, if a party to a non-cleared OTC derivative contract is a Financial Instruments Business Operator, through the general supervisory regime provided under the FIEA and the "Comprehensive Guidelines for Supervision of Financial Instruments Business Operators, etc.", the JFSA will periodically review the soundness of that Financial Instruments Business Operator's business operation (including record keeping for transactions) and its financial condition (including capital adequacy ratio; and management of (i) market risk, (ii) counterparty risk and (iii) liquidity risk).</p> <p>This review could extend to a review of exchange of collateral, timely confirmation, portfolio reconciliation, dispute resolution, monitoring of the value of outstanding OTC derivatives and daily mark-to-market in relation to non-cleared OTC derivative contracts.</p> <p>For this reason at this stage the provisions on risk mitigation techniques are not comparable.</p>
<p><i>Confirmation</i> 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</p>	<p>No corresponding rule</p>	<p>Requirements in the Japanese regime are not comparable.</p>



<p>master agreements, master confirmation agreements, or other standard terms. It may take the form of an electronically executed contract or a document signed by both counterparties.</p>		
<p>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:</p> <p>(a) for credit default swaps and interest rate swaps:</p> <p>(i) if concluded on or before February 28, 2014: by the end of the second business day following the date of execution;</p> <p>(ii) if concluded after February 28, 2014: by the end of the next business day following the date of execution;</p> <p>(b) for equity swaps, foreign exchange swaps, commodity swaps and all other derivatives:</p> <p>(i) if concluded on or before August 31, 2013: by the end of the third business day following the date of execution;</p> <p>(ii) if concluded between August 31, 2013 and August 31, 2014: by the end of the second business day following the date of execution;</p> <p>(iii) if concluded after August 31, 2014: by the end of the next business day following the date of execution.</p>		

<p><i>OTC derivative contracts entered into with a non-financial counterparty below the clearing threshold</i> must be confirmed, where available via electronic means, as soon as possible and at the latest as follows:²⁹⁷</p> <p>(a) for credit default swaps and interest rate swaps:</p> <ul style="list-style-type: none"> (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; <p>(b) for equity swaps, foreign exchange swaps, commodity swaps and all other derivatives:</p> <ul style="list-style-type: none"> (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 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. 	<p>No corresponding rule</p>	<p>Requirements in the Japanese regime are not comparable.</p>
<p>Timing</p> <p>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.</p>	<p>No corresponding rule</p>	<p>Requirements in the Japanese regime are not comparable</p>

<p>Reporting</p> <p>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.²⁹⁸</p>	<p><i>No corresponding rule</i></p>	<p>Requirements in the Japanese regime are not comparable.</p>
<ul style="list-style-type: none"> • A counterparty may delegate the performance of its confirmation obligation. However, such counterparty remains responsible for compliance with such obligation. 	<p><i>No corresponding rule</i></p>	<p>Requirements in the Japanese regime are not comparable.</p>



D. Portfolio Reconciliation Article 11(1)(b)

<p><i>Portfolio reconciliation.</i> 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.</p>	<p><i>No corresponding rule</i></p>	<p>Requirements in the Japanese regime are not comparable.</p>
<p>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 a counterparty.</p>	<p><i>No corresponding rule</i></p>	<p>Requirements in the Japanese regime are not comparable.</p>
<p>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.</p>	<p><i>No corresponding rule</i></p>	<p>Requirements in the Japanese regime are not comparable.</p>
<p>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:</p> <ul style="list-style-type: none"> (a) for a financial counterparty or a Non-Financial Counterparty above the clearing threshold: <ul style="list-style-type: none"> (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 	<p><i>No corresponding rule</i></p>	<p>Requirements in the Japanese regime are not comparable.</p>

<p>outstanding with each other at any time during the week;</p> <p>(iii) once per quarter when the counterparties have 50 or less OTC derivative contracts outstanding with each other at any time during the quarter;</p> <p>(b) for a non-financial counterparty below the clearing threshold:</p> <p>(i) once per quarter when the counterparties have more than 100 OTC derivative contracts outstanding with each other at any time during the quarter;</p> <p>(ii) once per year when the counterparties have 100 or less OTC derivative contracts outstanding with each other.²⁹⁹</p>		
E. Portfolio compression 11(1)		
<p><i>Portfolio compression.</i> 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.</p> <p>Financial counterparties and non-financial 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</p>	<p><i>No corresponding rule</i></p>	<p>Requirements in the Japanese regime are not comparable.</p>

F. Dispute resolution 11(1)		
<p><i>Dispute resolution.</i> When concluding OTC derivative contracts with each other, financial counterparties and non-financial counterparties must have agreed detailed procedures and processes in relation to:</p> <p>(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</p> <p>(b) the resolution of disputes in a timely manner with a specific process for those disputes that are not resolved within five business days.</p>	<i>No corresponding rule</i>	Requirements in the Japanese regime are not comparable.
<p>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.</p> <p>A counterparty may delegate the performance of its obligations related to dispute resolution. However, such counterparty remains responsible for compliance with such obligation.</p>	<i>No corresponding rule</i>	Requirements in the Japanese regime are not comparable.
G. Mark-to-Market and Mark-to-model Article 11(2)		
<p>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.</p>	<i>No corresponding rule</i>	Requirements in the Japanese regime are not comparable.

<p><i>Market conditions that prevent marking-to market.</i> Market conditions prevent marking-to-market of an OTC derivative contract when:</p> <p>(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</p> <p>(b) the range of reasonable fair values estimates is significant and the probabilities of the various estimates cannot reasonably be assessed.</p>		
<p><i>Marking-to-model.</i> For using marking-to-model, financial and non-financial counterparties shall have a model that:</p> <p>(a) incorporates all factors that counterparties would consider in setting a price, including using as much as possible marking-to-market information;</p> <p>(b) is consistent with accepted economic methodologies for pricing financial instruments;</p> <p>(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;</p> <p>(d) is validated and monitored independently, by another division than the division taking the risk;</p> <p>(e) is duly documented and approved by the board of directors (or a delegated committee thereof) as</p>	<p>No corresponding rule</p>	<p>Requirements in the Japanese regime are not comparable.</p>



<p>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.</p>		
<p>H. Bilateral Margins and capital Article 11(3)</p>		
<p><i>General provision in EMIR</i></p> <p>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.</p> <p>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.</p>	<p><i>General provision in the FIEA</i></p> <p>The FIEA stipulates, as a general requirement for registration, a minimum capital requirement for Financial Instruments Business Operators. The requirement depends on the type of business to be conducted (e.g. for a Type-1 Financial Instruments Business Operator which will not offer securities underwriting services, JPY 50,000,000 at minimum). The FIEA also requires a Type-1 Financial Instruments Business Operator to keep its capital adequacy ratio as calculated pursuant to the FIEA at no less than 120 per cent., to report such ratio monthly to the Finance Bureau and to notify the Finance Bureau when its ratio falls below 140 per cent. Registered Financial Institutions are subject to similar rules relating to minimum capital requirements and capital adequacy ratios as provided by each relevant law such as the Banking Law and the Insurance Business Law.</p> <p>No requirement on bilateral margins is currently envisaged under the Japanese regime.</p>	<p>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.</p>

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- ¹ Article 156-2 of the FIEA
² Article 194-7(1) of the FIEA, Article 37-2(xiv-ii)(xiv-iii)(xiv-iv) of the Order for Enforcement on FIEA.
³ The Bank of Japan Policy on Oversight of Financial Market Infrastructures, March 2013
⁴ The Bank of Japan Policy on Oversight of Financial Market Infrastructures, March 2013
⁵ <http://www.imf.org/external/pubs/ft/scr/2012/cr12230.pdf>
⁶ <http://www.imf.org/external/pubs/ft/scr/2012/cr12229.pdf>
⁷ Source: Article 156-20-2 of the FIEA
⁸ Source: Articles 156-20-4.1 and 156-20-4.2 of the FIEA
⁹ Source: Article 156-20-16 of the FIEA
¹⁰ Source: Article 156-20-18 of the FIEA
¹¹ EMIR, Art. 26(1) and Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 3 and 4.
¹² Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 3(1) and (2).
¹³ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 3(1) and (2).
¹⁴ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 3(7).
¹⁵ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 3(5).
¹⁶ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 3(3).
¹⁷ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Recital 12 and Art. 3(4).
¹⁸ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 4(1).
¹⁹ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 4(2).
²⁰ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 4(4).
²¹ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 4(5).
²² Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 4(6).
²³ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 4(7).
²⁴ EMIR, Art. 26(2) and Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 5(1).
²⁵ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 5.
²⁶ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 7(1).
²⁷ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 7(2).
²⁸ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 7(3).
²⁹ EMIR, Art. 26(4).
³⁰ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 7(6).
³¹ EMIR, Art. 26(5).
³² Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 8(1) to (3).
³³ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 8(4).
³⁴ EMIR, Art. 26(6).
³⁵ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 8.
³⁶ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 8.
³⁷ EMIR, Art. 26(7); Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 10.
³⁸ EMIR, Art. 26(8).
³⁹ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 11(1) to (4).
⁴⁰ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 11(5).
⁴¹ Article 156-4.2(1) of the FIEA.
⁴² Article 156-4.1 of the FIEA.
⁴³ Article 156-12 of the FIEA.
⁴⁴ Article 156-3.2 of the FIEA.
⁴⁵ Article 156-4.1 of the FIEA.
⁴⁶ Article 156-4.1 of the FIEA.
⁴⁷ Article 156-4.1 of the FIEA.
⁴⁸ Article 156-4.1 of the FIEA.
⁴⁹ Article 156-3.2 and Article 156-4.1 of the FIEA.
⁵⁰ Article 362.4 (2) of the Companies Act.
⁵¹ Article 156-3.2 of the FIEA.
⁵² Article 156-12-2 of the FIEA; Article 21 of the CCP Ordinance.
⁵³ Article 362.4 (2) of the Companies Act.
⁵⁴ Article 362.4 (2) of the Companies Act.
⁵⁵ EMIR, Art. 27(1).
⁵⁶ EMIR, Art. 27(2).
⁵⁷ EMIR, Art. 2(28).
⁵⁸ EMIR, Art. 27(2).
⁵⁹ EMIR, Art. 27(3).
⁶⁰ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 4(3).
⁶¹ Article 156-4.2(1) of the FIEA.
⁶² Article 156-4.1 of the FIEA.
⁶³ Articles 156-4.2(4) and 156-20-4.2(4) of the FIEA.
⁶⁴ Article 156-4.1 of the FIEA.
⁶⁵ Article 156-4.3 of the FIEA.
⁶⁶ Article 156-4.2 of the FIEA.
⁶⁷ Article 156-8.1 of the FIEA.

- ⁶⁸ Article 156-8.2 of the FIEA.
- ⁶⁹ EMIR, Art. 28(1).
- ⁷⁰ EMIR, Art. 28(2).
- ⁷¹ EMIR, Art. 28(3).
- ⁷² Article 156-4.1 of the FIEA.
- ⁷³ EMIR, Art. 29(1).
- ⁷⁴ EMIR, Art. 29(2).
- ⁷⁵ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 12.
- ⁷⁶ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Recital 16.
- ⁷⁷ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 13.
- ⁷⁸ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 14.
- ⁷⁹ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 15.
- ⁸⁰ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 16.
- ⁸¹ Article 156-63 of the FIEA.
- ⁸² Article 156-63 of the FIEA.
- ⁸³ Articles 4.2, 4.3 and 4.4 of the OTC Derivatives Ordinance.
- ⁸⁴ Articles 5, 3 and 6.1 of the OTC Derivatives Ordinance and Article 156-62 and 156-63.1 of the FIEA.
- ⁸⁵ Article 48 of the CCP Ordinance.
- ⁸⁶ Article 435 of the Companies Act.
- ⁸⁷ Article 156-63 of the FIEA.
- ⁸⁸ 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).
- ⁸⁹ EMIR, Art. 30(1).
- ⁹⁰ EMIR, Art. 30(2).
- ⁹¹ EMIR, Art. 30(4).
- ⁹² EMIR, Art. 30(3).
- ⁹³ EMIR, Art. 30(5).
- ⁹⁴ Article 156-5-3 of the FIEA.
- ⁹⁵ Article 156-5-5 of the FIEA.
- ⁹⁶ Article 156-5-6 of the FIEA.
- ⁹⁷ Article 156-5-8 of the FIEA.
- ⁹⁸ Article 156-5-9 of the FIEA.
- ⁹⁹ EMIR, Art. 31(1).
- ¹⁰⁰ EMIR, Art. 31(1).
- ¹⁰¹ 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).
- ¹⁰² EMIR, Art. 31(2).
- ¹⁰³ EMIR, Art. 31(3).
- ¹⁰⁴ EMIR, Art. 31(5) and (6).
- ¹⁰⁵ Article 156-13 of the FIEA, Article 24 of the CCP Ordinance.
- ¹⁰⁶ Article 156-5-3 of the FIEA.
- ¹⁰⁷ Article 156-5-5 of the FIEA.
- ¹⁰⁸ EMIR, Art. 32(1).
- ¹⁰⁹ EMIR, Art. 32(2).
- ¹¹⁰ EMIR, Art. 32(3).
- ¹¹¹ EMIR, Art. 32(4).
- ¹¹² EMIR., Art. 32(6), (7).
- ¹¹³ Article 156-5-6 of the FIEA.
- ¹¹⁴ Article 156-5-8 of the FIEA.
- ¹¹⁵ Article 156-5-9 of the FIEA.
- ¹¹⁶ 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).
- ¹¹⁷ EMIR, Art. 33(1).
- ¹¹⁸ EMIR, Art. 33(2).
- ¹¹⁹ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Recital 13.
- ¹²⁰ Articles 156-8 and 156-20-7 of the FIEA.
- ¹²¹ Articles 156-9 of the FIEA.
- ¹²² Article 355, 356, 365-1 of the Companies Act 2005.
- ¹²³ EMIR, Art. 26(3).
- ¹²⁴ EMIR, Art. 34 (1) and (2).
- ¹²⁵ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 17.
- ¹²⁶ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 18.
- ¹²⁷ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 19.
- ¹²⁸ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 20.
- ¹²⁹ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 21.
- ¹³⁰ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 22.
- ¹³¹ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 23.

- ¹³² Article 156-4.1 of the FIEA.
¹³³ EMIR, Art. 35(1).
¹³⁴ EMIR, Art. 35(2).
¹³⁵ Article 156-2 of the FIEA.
¹³⁶ EMIR, Art. 36(1).
¹³⁷ EMIR, Art. 36(1) and (2).
¹³⁸ Articles 156-9 and 156-20-8 of the FIEA.
¹³⁹ EMIR, Art. 37(1).
¹⁴⁰ EMIR, Art. 37(3).
¹⁴¹ EMIR, Art. 37(4) and (5).
¹⁴² EMIR, Art. 37(6).
¹⁴³ EMIR, Art. 37(2).
¹⁴⁴ Articles 156-7.2(3) and 156-20-6.2(2) of the FIEA.
¹⁴⁵ Article 156-4.1 of the FIEA.
¹⁴⁶ EMIR, Art. 38(1).
¹⁴⁷ EMIR, Art. 38(3) to (5).
¹⁴⁸ EMIR, Art. 38(1).
¹⁴⁹ EMIR, Art. 38(2).
¹⁵⁰ EMIR, Art. 38(1) and (3).
¹⁵¹ Article 156-4.1 of the FIEA.
¹⁵² EMIR, Art. 39(1) to (3).
¹⁵³ EMIR, Art. 39(4) to (6).
¹⁵⁴ EMIR, Art. 39(7).
¹⁵⁵ EMIR, Art. 39(8).
¹⁵⁶ EMIR, Art. 39(9).
¹⁵⁷ EMIR, Art. 39(10).
¹⁵⁸ Article 156-11 of the FIEA; Article 18 of the CCP Ordinance.
¹⁵⁹ Article 156-7.2(8) of the FIEA; Article 17(5) of the CCP Ordinance.
¹⁶⁰ EMIR, Art. 40(1).
¹⁶¹ Article 156-7.2(5) and (8) of the FIEA; Article 17(5) of the CCP Ordinance; Article 156-20-6.2(4) and (6) of the FIEA; Article 33(2) of the CCP Ordinance.
¹⁶² Article 156-4.1 of the FIEA.
¹⁶³ Article 156-4.1 of the FIEA.
¹⁶⁴ Article 156-4.1 of the FIEA.
¹⁶⁵ Articles 156-4.1(1), 156-20-4.1(2), Articles 156-4.1(4) and 156-20-4.1(5) of the FIEA.
¹⁶⁶ EMIR, Art. 41(1).
¹⁶⁷ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Recital 21.
¹⁶⁸ EMIR, Art. 41(1).
¹⁶⁹ EMIR, Art. 41(2).
¹⁷⁰ EMIR, Art. 41(3) and (4).
¹⁷¹ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 24(1).
¹⁷² Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 24(1).
¹⁷³ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 24(2).
¹⁷⁴ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 24(4).
¹⁷⁵ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 25.
¹⁷⁶ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 26(1).
¹⁷⁷ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 26(4).
¹⁷⁸ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 27.
¹⁷⁹ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 28.
¹⁸⁰ Article 156-7.2(5) and (8) of the FIEA; Article 17(5) of the CCP Ordinance; Article 156-20-6.2(4) and (6) of the FIEA; Article 33(2) of the CCP Ordinance.
¹⁸¹ Articles 156-4.1(1), 156-20-4.1(2), Articles 156-4.1(4) and 156-20-4.1(5) of the FIEA.
¹⁸² Article 156-4.1 of the FIEA.
¹⁸³ Article 156-4.1 of the FIEA.
¹⁸⁴ Article 156-4.1 of the FIEA.
¹⁸⁵ Article 156-4.1 of the FIEA.
¹⁸⁶ Article 156-4.1 of the FIEA.
¹⁸⁷ EMIR, Art. 42(1) and (2).
¹⁸⁸ EMIR, Art. 42(3).
¹⁸⁹ EMIR, Art. 42(4).
¹⁹⁰ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 29.
¹⁹¹ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 30.
¹⁹² Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 31.
¹⁹³ Article 156-7.2(5) and (8) of the FIEA; Article 17(5) of the CCP Ordinance; Article 156-20-6.2(4) and (6) of the FIEA; Article 33(2) of the CCP Ordinance.
¹⁹⁴ Articles 156-4.1(1), 156-20-4.1(2), Articles 156-4.1(4) and 156-20-4.1(5) of the FIEA.
¹⁹⁵ Article 156-4.1 of the FIEA.
¹⁹⁶ Article 156-4.1 of the FIEA.

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- ¹⁹⁷ Article 156-4.1 of the FIEA.
- ¹⁹⁸ EMIR, Art. 43.
- ¹⁹⁹ EMIR, Art. 43(3).
- ²⁰⁰ Article 156-7.2(5) and (8) of the FIEA; Article 17(5) of the CCP Ordinance; Article 156-20-6.2(4) and (6) of the FIEA; Article 33(2) of the CCP Ordinance.
- ²⁰¹ Articles 156-4.1(1), 156-20-4.1(2), Articles 156-4.1(4) and 156-20-4.1(5) of the FIEA.
- ²⁰² EMIR, Art. 44(1).
- ²⁰³ EMIR, Art. 44 (1).
- ²⁰⁴ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 32.
- ²⁰⁵ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 33.
- ²⁰⁶ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 34.
- ²⁰⁷ Article 156-7.2(5) and (8) of the FIEA; Article 17(5) of the CCP Ordinance; Article 156-20-6.2(4) and (6) of the FIEA; Article 33(2) of the CCP Ordinance.
- ²⁰⁸ Articles 156-4.1(1), 156-20-4.1(2), Articles 156-4.1(4) and 156-20-4.1(5) of the FIEA.
- ²⁰⁹ Article 156-4.1 of the FIEA.
- ²¹⁰ Article 156-4.1 of the FIEA.
- ²¹¹ Article 156-4.1 of the FIEA.
- ²¹² EMIR, Art. 45(1) to (4).
- ²¹³ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 35.
- ²¹⁴ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 36.
- ²¹⁵ Article 156-7.2(5) and (8) of the FIEA; Article 17(5) of the CCP Ordinance; Article 156-20-6.2(4) and (6) of the FIEA; Article 33(2) of the CCP Ordinance.
- ²¹⁶ Articles 156-4.1(1), 156-20-4.1(2), Articles 156-4.1(4) and 156-20-4.1(5) of the FIEA.
- ²¹⁷ Article 156-4.1 of the FIEA.
- ²¹⁸ Article 156-4.1 of the FIEA.
- ²¹⁹ EMIR, Art. 46(1).
- ²²⁰ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 37 and 42.
- ²²¹ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 38.
- ²²² Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 39 to 41.
- ²²³ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 43.
- ²²⁴ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 44.
- ²²⁵ Article 156-7.2(5) and (8) of the FIEA; Article 17(5) of the CCP Ordinance; Article 156-20-6.2(4) and (6) of the FIEA; Article 33(2) of the CCP Ordinance.
- ²²⁶ Articles 156-4.1(1), 156-20-4.1(2), Articles 156-4.1(4) and 156-20-4.1(5) of the FIEA.
- ²²⁷ Article 156-7.2(8) of the FIEA; Article 17(5) of the CCP Ordinance.
- ²²⁸ Article 156-11 of the FIEA; Article 18 of the CCP Ordinance.
- ²²⁹ Article 156-11 of the FIEA; Article 18 of the CCP Ordinance.
- ²³⁰ Article 156-4.1 of the FIEA.
- ²³¹ Article 156-4.1 of the FIEA.
- ²³² EMIR, Art. 47(6)
- ²³³ EMIR, Art. 47(1); Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 45.
- ²³⁴ EMIR, Art. 47(3); Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 46.
- ²³⁵ EMIR, Art. 47(4); Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 47.
- ²³⁶ EMIR, Art. 47(5).
- ²³⁷ EMIR, Art. 48(7). Under Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, 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.
- ²³⁸ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art 48.
- ²³⁹ Article 156-7.2(5) and (8) of the FIEA; Article 17(5) of the CCP Ordinance; Article 156-20-6.2(4) and (6) of the FIEA; Article 33(2) of the CCP Ordinance.
- ²⁴⁰ Articles 156-4.1(1), 156-20-4.1(2), Articles 156-4.1(4) and 156-20-4.1(5) of the FIEA.
- ²⁴¹ Article 156-4.1 of the FIEA and Article 17.1(5) of the CCP Ordinance.
- ²⁴² Article 156-4.1 of the FIEA and Article 17.1(5) of the CCP Ordinance.
- ²⁴³ Article 156-4.1 of the FIEA and Article 17.1(5) of the CCP Ordinance.
- ²⁴⁴ Article 156-4.1 of the FIEA and Article 17.1(5) of the CCP Ordinance.
- ²⁴⁵ EMIR, Art. 48(1).
- ²⁴⁶ EMIR, Art. 48(2).
- ²⁴⁷ EMIR, Art. 48(3).
- ²⁴⁸ EMIR, Art. 48(4).
- ²⁴⁹ EMIR, Art. 48(5).
- ²⁵⁰ EMIR, Art. 48(6).
- ²⁵¹ EMIR, Art. 48(7).
- ²⁵² Article 156-7.2(5) and (8) of the FIEA; Article 17(5) of the CCP Ordinance; Article 156-20-6.2(4) and (6) of the FIEA; Article 33(2) of the CCP Ordinance.
- ²⁵³ Articles 156-4.1(1), 156-20-4.1(2), Articles 156-4.1(4) and 156-20-4.1(5) of the FIEA.
- ²⁵⁴ Article 156-11 of the FIEA.
- ²⁵⁵ Articles 156-11-2 and 156-20-9 of the FIEA.
- ²⁵⁶ EMIR, Art. 49(1); Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 50 and 51.

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- ²⁵⁷ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 52.
- ²⁵⁸ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 53.
- ²⁵⁹ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 56 and 57.
- ²⁶⁰ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 58.
- ²⁶¹ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 59.
- ²⁶² Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 60.
- ²⁶³ EMIR, Art. 49(2); Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 61.
- ²⁶⁴ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 62.
- ²⁶⁵ EMIR, Art. 49(3); Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 64.
- ²⁶⁶ Article 156-7.2(5) and (8) of the FIEA; Article 17(5) of the CCP Ordinance; Article 156-20-6.2(4) and (6) of the FIEA; Article 33(2) of the CCP Ordinance.
- ²⁶⁷ Articles 156-4.1(1), 156-20-4.1(2), Articles 156-4.1(4) and 156-20-4.1(5) of the FIEA.
- ²⁶⁸ Article 156-4.1 of the FIEA.
- ²⁶⁹ Article 156-4.1 of the FIEA.
- ²⁷⁰ Article 156-4.1 of the FIEA.
- ²⁷¹ Article 156-4.1 of the FIEA.
- ²⁷² Article 156-4.1 of the FIEA.
- ²⁷³ Article 156-4.1 of the FIEA.
- ²⁷⁴ Article 156-4.1 of the FIEA.
- ²⁷⁵ Article 156-4.1 of the FIEA.
- ²⁷⁶ Article 156-4.1 of the FIEA.
- ²⁷⁷ EMIR, Art. 50(1).
- ²⁷⁸ EMIR, Art. 50(2) and (3).
- ²⁷⁹ 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.
- ²⁸⁰ Article 2.3(1) and (4) of the OTC Derivatives Ordinance
- ²⁸¹ Page 7 of the "Summary of Discussions at the OTC Derivatives Market Regulation Working Group", published by the JFSA on 26 December 2011
- ²⁸² Response Nos. 29 and 64 of the responses released by the JFSA on 11 July 2012
- ²⁸³ Article 2.3(4) of the OTC Derivatives Ordinance
- ²⁸⁴ Page 7 of the "Summary of Discussions at the OTC Derivatives Market Regulation Working Group", published by the JFSA on 26 December 2011
- ²⁸⁵ Article 156-62(1) of the OTC Derivatives Ordinance
- ²⁸⁶ Articles 2.1 of the OTC Derivatives Ordinance
- ²⁸⁷ Article 1 of the Public Notice
- ²⁸⁸ Article 156-62(2) of the FIEA
- ²⁸⁹ Article 2.2 of the OTC Derivatives Ordinance
- ²⁹⁰ Article 2 of the Public Notice
- ²⁹¹ Article 2.1 of the OTC Derivatives Ordinance
- ²⁹² Article 156-62 of the FIEA
- ²⁹³ Articles 2.1 and 2.2 of the OTC Derivatives Ordinance
- ²⁹⁴ Article 2.3(3) of the OTC Derivatives Ordinance
- ²⁹⁵ Article 2.3(4) of the OTC Derivatives Ordinance
- ²⁹⁶ EMIR, Art. 10(3).
- ²⁹⁷ OTC Derivatives Draft RTS, Art. 11(2).
- ²⁹⁸ OTC Derivatives RTS, Art. 11(4).
- ²⁹⁹ OTC Derivatives RTS, Art. 12(3).