



European Securities and
Markets Authority

Final report

Technical advice on third country regulatory equivalence under EMIR – Switzerland





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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 Switzerland	
Part I – Effective on-going supervision and enforcement	8
Part II - Effective equivalent system for the recognition of CCPs	11
Part III - Legally binding requirements which are equivalent to those of Title IV of EMIR	12
Conclusion	13
 ANNEX I	
Original Mandate from the European Commission – 11 October 2012	14
 ANNEX II	
Updated Mandate from the European Commission – 13 June 2012	19
 ANNEX III	
Legally binding requirements which are equivalent to those in Title IV of EMIR	23



Key to the references and terms used in this technical advice

BA: Swiss Federal Law of 8 November 1934 on Banks and Savings Banks (Banking Act)

BIO-FINMA: Ordinance of the Swiss Financial Markets Supervisory Authority on the Insolvency of Banks and Securities Dealers of 12 August 2012

BO: Swiss Federal Ordinance of 17 May 1972 on Banks and Savings Banks (Banking Ordinance)

CAO: Swiss Federal Ordinance of 29 September 2006 on Capital Adequacy and Risk Diversification for Banks and Securities Dealers (Capital Adequacy Ordinance)

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

FISA: Swiss Federal Intermediated Securities Act of 1 January 2010

FINMA: Swiss Financial Market Supervisory Authority

FINMASA: Financial Market Supervisory Authority Act of 22 June 2007

LO: Swiss Federal Ordinance of 30 November 2012 on Liquidity for Banks (Liquidity Ordinance)

NCA: National Competent Authority from the European Union

NBA: Swiss Federal National Bank Act of 3 October 2003

NBO: National Bank Ordinance of 18 March 2004 (status as of 1 July 2013, National Bank Ordinance)

RTS: Regulatory Technical Standards

SNB: Swiss National Bank



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 Swiss 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.
 3. **This report sets out ESMA's advice to the European Commission in respect of the equivalence between the Swiss regulatory regime and the EU regulatory regime under EMIR in respect of the recognition of third country CCPs. Switzerland is still in the process of finalising its regulatory regime for the clearing obligation, reporting obligation, non-financial counterparties and risk mitigation techniques for uncleared trades. ESMA is therefore still in the process of preparing its technical advice under these limbs of the European Commission's mandate. That technical advice will be delivered at a later date.**
 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 Switzerland 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.
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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 Swiss 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 Switzerland the original deadline of 15 June 2013 was changed to 15 July 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 Switzerland the revised deadline of 15 July 2013 was changed to 1 October 2013.
2. The mandate on equivalence for Switzerland therefore covers two specific areas: 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.
3. **This report sets out ESMA's advice to the European Commission in respect of the equivalence between the Swiss regulatory regime and the EU regulatory regime under EMIR in respect of the recognition of third country CCPs. Switzerland is still in the process of finalising its regulatory regime for the clearing obligation, reporting obligation, non-financial counterparties and risk mitigation techniques for uncleared trades. ESMA is therefore still in the process of preparing its technical advice under these limbs of the European Commission's mandate. That technical advice will be delivered at a later date.**
4. ESMA has liaised with its counterparts in Switzerland (FINMA and the SNB) 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 Switzerland to prepare possible implementing acts under Article 25(6) of EMIR. **This report contains ESMA's advice in respect of Switzerland under Article 25(6) of EMIR.**

Potential duplicative or conflicting requirements on market participants

8. In accordance with Article 13(1) of EMIR, the Commission, assisted by ESMA, must monitor, prepare reports and recommend possible action to the European Parliament and the Council on the international application of the clearing and reporting obligations, the treatment of non-financial undertakings and the risk mitigation techniques for OTC trades that are not cleared by a CCP, in particular with regard to potential duplicative or conflicting requirements on market participants.
9. 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.
10. The European Commission has requested ESMA's technical advice in respect of Switzerland to prepare possible implementing acts under Articles 13(1) and 13(3) of EMIR. Switzerland is still in the process of finalising its regulatory regime for the clearing obligation and risk mitigation techniques for uncleared trades and ESMA is therefore still in the process of preparing its technical advice under this limb of the European Commission's mandate. **This report does not contain ESMA's advice in respect of Switzerland under Articles 13(1) or 13(3) of EMIR. That technical advice will be delivered at a later date.**

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

11. The adoption of an implementing act by the European Commission is required to enable a third country CCP to apply to ESMA for recognition. However ESMA reiterates that this technical advice should not be seen to prejudice 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 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 will automatically be granted recognition by ESMA. Only if all the other conditions set out in Articles 25 of EMIR are met, can a third country CCP be granted recognition².

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.



ESMA's Approach to assessing equivalence

12. 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. Annex III contains 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 table at Annex III includes 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).
13. 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 Switzerland

Part I – Effective on-going supervision and enforcement

14. The Swiss financial supervisory regime is robust with a track record of effective supervision of financial markets including during the recent financial crisis.
15. Switzerland has a model of financial regulation and supervision with one agency in charge of prudential regulation and conduct of business. FINMA is responsible for the prudential and conduct oversight of banks, insurance companies, exchanges, securities dealers, collective investment schemes, distributors and insurance intermediaries. FINMA also has the objective of protecting creditors, investors, and policy holders as well as ensuring the smooth functioning of the financial markets. The SNB has responsibility for monetary policy and for contributing to financial stability. FINMA and SNB have a role in the regulation of CCPs.
16. The Financial Market Supervisory Authority Act of 22 June 2007 (FINMASA) serves as an umbrella law for a number of sector-specific laws governing financial market regulation and supervision. In addition to setting organisational parameters for FINMA as an institution, the FINMASA defines principles for the regulation of financial markets, as well as a set of harmonised supervisory instruments and sanctions. Seven sector-specific Federal Acts issued by the Federal Parliament (referred to as the “Financial Market Acts”), including the Federal Act on Banks and Savings Banks (BA), complement the FINMASA. The BA lays down the general principles with regard to subject, purpose and scope of supervision, and contains provisions for the commencement, exercise and termination of banking activities. According to BA Article 1bis FINMA may subject CCPs to banking supervision. FINMA’s established practice requires that all CCPs authorised in Switzerland are subjected to banking supervision. Once CCPs are subjected to the BA, they are technically treated as banks and have to meet all requirements of the general banking regulations. However, FINMA has the possibility to exempt a CCP from certain provisions of the BA and order the easing or tightening of provisions in order to take into account the particular business activity and risk situation of a CCP.
17. The National Bank Act of 3 October 2003 (NBA) serves as the statutory basis for the SNB and its activities. The NBA sets out in detail the SNB’s constitutional mandate, its tasks and sovereign instruments. One of these tasks is the contribution to the stability of the financial system. This includes the SNB’s oversight of systemically important payment and settlement systems, including CCPs. The NBA mandates the SNB to designate systemically important CCPs, establish minimum requirements for such CCPs, assess compliance with these minimum requirements and take actions if necessary to ensure compliance.
18. Statutory ordinances issued by the Federal Council (executive branch of the Swiss government) by FINMA and by the SNB implement the Financial Market Acts and the NBA on a second and third level.
19. Under the BA, the specification of many of the details of CCP regulation is delegated by the Federal Parliament to the Federal Council. The Federal Council’s Ordinance on Banks and Savings Banks (BO), the Ordinance on Capital Adequacy and Risk Diversification for Banks and Securities Dealers (CAO) and the Ordinance on Liquidity for Banks (LO) elaborate in more detail on the provisions of the BA. The BO also delegates some rule-making powers to FINMA which has enacted the Ordinance on Insolvency of Banks and Securities Dealers (BIO-FINMA).
20. Circulars and other pronouncements (newsletters, discussion papers, FAQs) issued and published by FINMA provide further guidance on FINMA’s interpretation and practical implementation of relevant financial market legislation. They provide substance to the intention of the legislator as conveyed in acts and ordinances. Most of FINMA’s guidelines on CCPs are to be found in its circulars that address, inter alia, solvency, governance and risk management, the internal audit function and the external auditors, and reporting.



21. The National Bank Ordinance (NBO) contains implementing regulations on the sovereign instruments of the SNB including oversight of CCPs. It outlines the criteria and procedures for designating systemically important CCPs, the minimum requirements and reporting obligations they need to fulfil, and the sanctions the SNB can impose to ensure the CCPs' compliance with the minimum requirements and reporting obligations.
22. The NBO has recently been revised. The revised NBO entered into force on 1 July 2013. The revision established new minimum requirements and strengthened some existing minimum requirements with the aim of implementing the CPSS-IOSCO Principles for Financial Market Infrastructures and achieving equivalence to EMIR and the relevant Commission Delegated Regulations for CCP requirements.
23. There is currently one CCP operating in Switzerland – SIX x-clear Ltd. A considerable proportion of the transactions cleared by SIX x-clear Ltd emanate from exchanges and trading platforms established in the European Union. SIX x-clear Ltd has established interoperability arrangements with the London-based LCH.Clearnet Ltd and EuroCCP, as well as the Dutch European Multilateral Clearing Facility (EMCF).

FINMA

24. According to BA Article 1bis, FINMA subjects CCPs to banking supervision and grants them a banking licence. The authorisation requirements specified in the BA as well as the extended duties of disclosure and minimum requirements prescribed by the SNB must be observed on an ongoing basis. FINMA has the possibility to exempt a CCP from certain provisions of the BA and order the easing or tightening of provisions in order to take into account the particular business activity and risk situation of a CCP. It is therefore able to decree a tailor-made licence. Based on the same regulatory framework, FINMA may also recognise foreign CCPs offering clearing services on Swiss trading facilities or to Swiss market participants.
25. The termination of CCP activity can either result from a waiver by the CCP or by revocation from FINMA, if the CCP no longer fulfils the requirements for its activity, or seriously violates the supervisory provisions.¹
26. Licensed CCPs are subject to ongoing supervision. This is to monitor continued compliance with licensing conditions and other statutory and regulatory requirements. In the event of shortcomings or breaches of these requirements, supervisory and enforcement measures are imposed to rectify the situation. The regulatory framework for this supervision is provided in particular by the FINMASA.
27. The extent and intensity of supervision will be based on the CCP's risk category and rating. The regulatory processes applicable to different supervisory categories differ by virtue of the supervisory instruments deployed, as well as the extent and frequency of auditing. The higher the risk category, the more intensive the supervision. Where certain rating parameters within a category result in negative values for a company, the standard supervisory process for this company is stepped up in the area concerned. FINMA may also assign the group of which the CCP is a subsidiary to a risk category and rating, and may subject the group to its consolidated supervision.
28. Under the dual supervisory system, FINMA's supervisory activities also draw on the work of audit firms which are specifically licensed for supervisory purposes. These firms regularly audit institutions for supervisory purposes and, in so doing, provide direct supervision. They report the findings of their supervisory audits to FINMA. To achieve timely and broad supervision, FINMA conducts targeted on-site reviews to complement the dual supervisory system.
29. As part of its supervision of CCPs, FINMA reviews inter alia monthly risk reports, quarterly management reports, and internal and external audit reports. FINMA regularly conducts or attends meetings with CCP management and staff, primarily focusing on risk management and risk control issues, as



well as discussing regulatory developments, relevant business projects and developments/changes within the CCP and/or its group.

SNB

30. The SNB's mandate for oversight of CCPs derives from NBA Article 5(2)(e) which states that "[the SNB] shall contribute to the stability of the financial system". NBA Articles 19 - 21 outline the SNB's oversight of payment systems, CCPs and securities settlement systems.
31. CCPs designated as systemically important (based on the criteria in NBO Articles 19 - 20) have to meet the minimum requirements as outlined in NBO Articles 22 - 34. Further, CCPs must provide the SNB with regular and ad hoc information to allow the SNB to determine whether a CCP complies with the minimum requirements. The SNB can also conduct on-site inspections or request third-parties to conduct such on-site inspections.
32. The SNB conducts comprehensive assessments of a CCP's compliance with the minimum requirements on an annual basis. In addition, it conducts targeted assessments prior to major changes. For the purpose of its assessments, the SNB relies on a broad range of information, including a self-assessment by the CCP, internal documentation of the CCP, internal and external audit reports, internal policies, as well as regular and ad hoc reports received through the CCP's reporting obligation, and regular and ad hoc meetings with a CCP on both management and staff level to discuss regulatory and business developments. The SNB also requests specific audits conducted by third parties and determines the scope and depth of such audits, in particular in the area of operational risk and information security.
33. If the SNB identifies any shortcomings, a CCP must outline measures and the timeline to achieve full compliance with the minimum requirements. If a CCP does not comply with minimum requirements or reporting obligations, the SNB can issue a recommendation or a contestable order to the CCP. If the CCP does not comply with the order, the SNB may inform FINMA about its findings which may take further supervisory and enforcement actions on the CCP.
34. FINMA and the SNB cooperate and coordinate their supervisory and oversight activities and consult each other prior to submitting recommendations or issuing orders to a CCP (BA Article 23^{bis} (4) and NBA Article 21(1)). FINMA and the SNB are authorised to provide each other with information and documents which are not publicly accessible and which they need to fulfil their respective tasks (BA Art. 23^{bis} (3) and NBA Article 50). FINMA and the SNB have further specified their cooperation in a memorandum of understanding.
35. FINMA and the SNB also work closely together with the Federal Department of Finance in developing the legal basis for CCP regulation, supervision and oversight.

ESMA's assessment

36. 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.
37. 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.
38. 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 Switzerland.

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

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

40. An equivalent system exists in Switzerland for the recognition of CCPs authorised under the legal regime of a third country. The system involves the third country CCP applying to FINMA for recognition before it can offer CCP clearing services to clearing members or trading venues established in Switzerland³. Recognition by FINMA is based on the legal framework of the country in which the third country CCP is authorised, providing an effective equivalent system for the recognition of CCPs authorised under third country legal regimes.
41. The SNB may also designate CCPs domiciled outside of Switzerland as systemically important for the stability of the Swiss financial markets. Under certain conditions, third country CCPs may be discharged from compliance with the minimum requirements established in the NBO.
42. Two CCPs authorised in the EU (LCH.Clearnet Ltd and Eurex Clearing Ltd) are currently recognised under the Swiss regime for third country CCPs. LCH.Clearnet Ltd has been recognised by FINMA as a third country CCP under Art. 1^{bis} of the BA. Eurex Clearing Ltd and LCH.Clearnet Ltd have both been designated as systemically important for the stability of the Swiss financial markets by the SNB. They have both been discharged from compliance with minimum requirements established in the NBO (under Articles 22 – 34), based on an assessment of the equivalence of the third country oversight regime and based on cooperation arrangements concluded by the relevant national authorities.
43. Similar to the EMIR regime, the Swiss regime for third country CCPs places reliance on the supervisory framework of the jurisdiction in which the CCP is authorised. In particular, the home competent authority must provide written confirmation to FINMA that the third country CCP is subject to adequate supervision, that the home competent authority has no objection to the third country CCP engaging in business activities in Switzerland and that the home competent authority is able to cooperate with FINMA with respect to supervisory matters. These tests involve similar considerations to those taken into account in assessing equivalence under EMIR.
44. Similar to the EMIR regime, the Swiss regime for third country CCPs requires the establishment of cooperative arrangements between the Swiss authorities and the authorities in the jurisdiction in which the CCP is authorised. In this regard, FINMA and the SNB have entered into Memoranda of Understanding with the Bank of England (on the supervision and oversight of LCH.Clearnet Ltd and SIX x-clear Ltd), with BaFin and the Deutsche Bundesbank (on the supervision and oversight of Eurex Clearing Ltd), and with the authorities of Denmark, Finland and Sweden (on the supervision and oversight of SIX x-clear Ltd). Furthermore, there has been an exchange of letters with the Dutch authorities as a basis for interoperability between EMCF and SIX x-clear Ltd. The UK, Dutch and Swiss authorities also have regular informal roundtables to coordinate regulatory requirements for and the supervision and oversight of the interoperability arrangement between LCH.Clearnet Ltd, EMCF, EuroCCP and SIX x-clear Ltd.
45. The Swiss regime does involve the imposition of certain reporting requirements on recognised third country CCPs⁴, namely a requirement that the CCP annually provide FINMA with:

³ Based on Article 1^{bis} of the Federal Act on Banks and Savings Banks (BA; SR 952.0).

⁴ BA Art. 1^{bis}, para. 2.

- (1) a complete list of the clearing members established in Switzerland to whom the third country CCP provides clearing services;
 - (2) a complete list of the clearing members of trading venues established in Switzerland to whom the third country CCP offers its clearing services;
 - (3) clearing statistics (to be specified according to the third country CCP's business portfolio);
 - (4) an annual report including the balance sheet and income statement of the CCP, as well as with information about possible changes in ownership, range of services and organisation; and
 - (5) a report on risk control (e.g. stress and back-testing) to be defined by FINMA depending on the individual cases regarding risk management of the foreign CCP.
46. The third country CCP must also inform FINMA of substantial changes to its risk management framework, especially regarding clearing members, risk management and new clearing services, as well as changes in supervision in the foreign CCP's country of domicile.
47. These requirements represent a departure from the third country CCP regime prescribed in EMIR, insofar as EMIR does not place such requirements on the CCP directly, but envisages the provision of such information under the information sharing arrangement between ESMA and the authorities responsible for supervision of the CCP. However, the impact of these reporting requirements is unlikely to be a significant burden on the recognised third country CCPs.
48. **Against this background, ESMA advises the Commission to consider the legal framework of Switzerland 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

49. ESMA has undertaken a comparative analysis of the legally binding requirements which are applicable, at a jurisdictional level, to CCPs in Switzerland and the corresponding legally binding requirements for CCPs under EMIR. The substantive analysis is set out in Annex III.
50. As highlighted under the detailed analysis included in Annex III, all of the provisions in Title IV of EMIR for CCPs are replicated with corresponding legally binding requirements which are applicable, at a jurisdictional level, to CCPs in Switzerland.
51. Switzerland has recently introduced a substantial revision of its standards for CCPs following the publication of the CPSS-IOSCO Principles for Financial Market Infrastructure by means of revising the NBO. The revised NBO entered into force on 1 July 2013. As part of this revision, the Swiss authorities have paid particular attention to the CCP requirements envisaged in EMIR. A number of the EMIR requirements are directly replicated in Swiss legislation.
52. The SNB has stated that one of the two objectives of its revising the regulatory framework for CCPs authorised in Switzerland was to ensure the equivalence of such regulatory framework with that established in the European Union.
53. On 29 August 2012 Switzerland's Federal Government mandated the Ministry of Finance to draw new legal provisions for OTC derivatives trading and financial market infrastructure in order to provide a legal basis for the implementation of G20 and FSB recommendations through a federal law. A first draft of the law was completed in July 2013 and is scheduled to enter a public consultation phase in autumn of 2013. Entry into force is planned for early 2015.

54. In many cases the revised regulatory framework for CCPs in Switzerland is less prescriptive than that under EMIR. This is a deliberate choice of the SNB which has stated that in drafting the revised NBO it has deliberately sought to avoid prescribing overly detailed specifications. However, in order to ensure consistency with the regulatory framework under EMIR, the SNB has introduced interpretative guidance on the revised NBO. This guidance provides that where there is room for interpretation of the Swiss requirements for CCPs, the primary sources for the interpretation are (a) the CPSS-IOSCO PFMI and (b) Titles IV and V of EMIR and the Commission Delegated Regulations promulgated thereunder. In addition to this general provision that CCPs look to the provisions of EMIR (and the relevant Commission Delegated Regulations) for guidance on how to implement the Swiss regime, there are particular provisions in respect of which CCPs in Switzerland are directed to the provisions in EMIR. An example of this is in respect of record keeping, where the SNB guidance recommends that for CCPs which offer their services to European markets, or to European financial institutions, the CCP records the information and data pursuant to the relevant Commission Delegated Regulation under EMIR. Another example is in respect of the CCP's own participation in its default waterfall (the 'skin-in-the-game' requirement). While the Swiss regime prescribes only that a CCP's own financial resources requirement be equal to a 'substantial proportion' of the CCP's total capital, the SNB guidance prescribes that in determining what constitutes a substantial proportion, CCPs should look to the EMIR requirement of 25% of a CCP's regulatory capital requirements.
55. **Taking into account the overall regulatory framework for CCPs in Switzerland and the SNB's interpretative guidance on the revised NBO, ESMA advises the Commission to consider that CCPs authorised in Switzerland comply with legally binding requirements which are equivalent to the requirements laid down in Title IV of EMIR.**
56. It should 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 FINMA and the SNB. This is in line with the mandate given to ESMA by the European Commission.

Conclusion on CCPs

Conclusion

57. **ESMA advises the Commission to consider that CCPs authorised in Switzerland are subject to effective supervision and enforcement on an on-going basis and that the legal framework of Switzerland provides for an effective equivalent system for the recognition of CCPs authorised under third-country legal regimes.**
58. **ESMA also advises the Commission to consider that the legal and supervisory arrangements of Switzerland ensure that CCPs authorised in Switzerland comply with legally binding requirements which are equivalent to the requirements laid down in Title IV of EMIR.**



ANNEX I – Mandate from the European Commission

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

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

The Commission reserves the right to revise and/or supplement this formal mandate and revise the timetable if the scope is amended. The technical advice received on the basis of this mandate should not 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**")⁵ 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 powers⁶.

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,⁷ 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.

⁵ OJ L 331, 15.12.2010, p. 84 - 119.

⁶ OJ L55/13, 28.2.2011, p. 13-18

⁷ 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)(1) of the ESMA Regulation,



take account of the principles set out in the Lamfalussy Report⁸ and those mentioned in the Stockholm Resolution of 23 March 2001⁹.

- 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.

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.

⁸ 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)

⁹ 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 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.

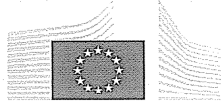
This mandate takes into consideration that ESMA requires sufficient time to prepare its technical advice and that the Commission may seek to adopt any implementing acts according to Article 291 of the TFEU. The powers of the Commission to adopt implementing acts are subject to the control mechanisms 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.

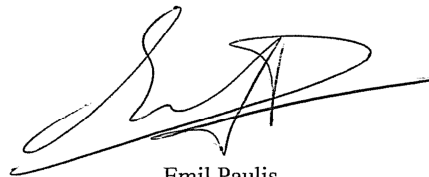
In any case, I would like to highlight that the extension of ESMA deadline to deliver its technical advice affects neither the procedure nor the timeline for recognition of third-country central counterparties or trade repositories.

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

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

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

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Emil Paulis', is written over a horizontal line. The signature is stylized and cursive.

Emil Paulis

Enclosures: Table on the deadlines for ESMA Technical Advice

Copies: N. Calviño

Contact:

Muriel Jakubowicz, Telephone: +32 229-58154, Muriel.Jakubowicz@ec.europa.eu

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 Duplicate 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 Switzerland 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.²</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.³ <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.⁴</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.⁵</p>	<p>Organisational requirements</p> <ul style="list-style-type: none"> • Governance arrangements. <p><i>Under the Banking Act, CCPs are required to:</i></p> <ul style="list-style-type: none"> • Have adequate organisational arrangements corresponding to their business activities. Creation of separate bodies for management on the one hand and for direction, supervision and control (i.e. board of directors) on the other. The authorities of the bodies must be segregated in a manner so as to ensure the effective supervision of the CCPs management.³² <p><i>Under FINMA Circular 08/24:</i></p> <ul style="list-style-type: none"> • The roles and responsibilities of the board of directors are defined. The board of directors is responsible for the direction, supervision and control of the firm's management and has to ensure a control framework is in place that reflects the size and the complexity of the firm.³³ <p>Members of the board of directors are required to be qualified and independent.³⁴</p> <p>The set-up and responsibilities of the audit committee of the board of directors is defined.³⁵</p> <p>The set-up and responsibilities of the internal audit function is defined.³⁶</p>	<p>Organisational requirements</p> <p><i>The Swiss regime for CCPs includes organisational requirements which are applicable, at a jurisdictional level, to CCPs in Switzerland, and which are broadly equivalent to those in EMIR.</i></p> <ul style="list-style-type: none"> • Governance arrangements. There are no specific requirements for Swiss CCPs that are part of a group. However, the <i>Explanatory Report on the revised NBO</i> references the EMIR RTS for interpretation purposes which indirectly incorporates this EMIR requirement. This explanatory report also specifically requires that the minimum requirements established for CCPs are fulfilled by a CCP even if it is part of a group. If a CCP is part of a financial services group, FINMA also has the ability to define regulatory requirements regarding organisation, risk management and control functions as well as regulatory capital and liquidity requirements at the group level via consolidated supervision.⁷⁷ <p>A Swiss CCP is not specifically required</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.⁶

A CCP must have adequate human resources to meet all of its obligations under EMIR, and should not share such resources with other group entities, unless under the terms of an outsourcing arrangement in accordance with EMIR, Art. 35.⁷

To ensure that CCPs have the necessary levels of human resources, that CCPs are accountable for their activities, and that CCPs Competent Authorities have relevant points of contact within the CCPs they supervise, all CCPs should have at least a chief risk officer, a chief compliance officer and chief technology officer, which positions must be filled by dedicated employees of the CCP.⁸

- **Risk management and internal control mechanisms.** A CCP must have a sound framework for the comprehensive management of all material risks, and must establish documented policies, procedures and systems and controls to identify measure, monitor and manage such risks. These must be structured to ensure that Clearing Members properly manage and contain the risks they pose to a CCP.⁹

A CCP must take an integrated and comprehensive view of, and ensure that its risk management tools can 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

There are detailed provisions related to control functions compliance³⁷ and risk control.³⁸ CCPs are required to have a chief risk officer and a chief compliance officer with access to the management and the board of directors and an internal audit function with direct board access. The functions in question have to be provided with appropriate resources and authority.

- **Risk management and internal control mechanisms.**

Under the Banking Act, CCPs are required to:

- Have adequate organisational arrangements corresponding to their business activities. Creation of separate bodies for management on the one hand and for direction, supervision and control (i.e. board of directors) on the other. The authorities of the bodies must be segregated in a manner so as to ensure the effective supervision of the CCPs management.³⁹

Under the Banking Ordinance, CCPs are required to:

- Have an effective internal control system and lay down in regulations or in internal guidelines the main principles underlying the management of risks (...). It must in particular identify, limit and supervise market, credit, default, settlement, liquidity and reputation risks as well as operational and legal risks.⁴⁰

Under FINMA Circular 08/24:

There are detailed provisions related to control functions, compliance⁴¹ and risk control.⁴² The risk control function has to be adequately staffed and provisioned with resources. It has to have access to all necessary information within the organisation. A member of senior management has to be responsible for the risk control

to have a chief technology officer. However, CCPs are required to maintain an appropriate organisational structure with regard to planning, implementing, monitoring and improving the management of tasks and activities relating to information security.

The Swiss regime does not specifically require that chief risk, chief compliance or chief technology officers are “dedicated employees.” Different control functions such as compliance and risk control can also be merged in small organisations if this does not generate any conflicts of interest. However, the risk and compliance functions are required to be adequately staffed and to have a member of senior management responsible for them. For large organisations, ESMA also understands that FINMA expects the functions of chief risk and compliance officer to be carried out by a dedicated employee.

- **Risk management and internal control mechanisms.** In this regard, the Swiss regime includes requirements which are applicable, at a jurisdictional level, to CCPs in Switzerland, and which are broadly equivalent to those of EMIR.
- **Compliance policy, procedures**



securities depositories, trading venues served by the CCP and other critical service providers.¹⁰

A CCP must have robust information and risk-control systems which allow the CCP and where appropriate, its Clearing Members, and to the extent practicable, their clients, to obtain timely information and apply risk management policies and procedures appropriately (including sufficient information to ensure that credit and liquidity exposures are monitored continuously at CCP-level, Clearing Member-level and, to the extent practicable, client-level).¹¹

A CCP must ensure that its risk management function has the necessary authority, expertise and access to all relevant information, and that it is sufficiently independent from the CCP's other functions.

The chief risk officer must implement the CCP's risk management framework.¹²

A CCP must have adequate internal control mechanisms to assist the board in monitoring the adequacy and effectiveness of its risk management policies, procedures and systems (including sound administrative and accounting procedures, a robust compliance function and an independent internal audit function).¹³

A CCP's financial statements must be prepared annually and audited by statutory auditors / audit firms within the meaning of Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts.¹⁴

- **Compliance policy, procedures and Compliance function.** A CCP must establish, implement and maintain adequate policies and procedures to detect any risk of failure by the CCP and its managers and employees to comply with the CCP's obligations under EMIR.¹⁵

function. Different control functions such as compliance and risk control can only be merged in small organisations if this does not generate any conflicts of interest. The risk control function has to be independent of the business and has to have a direct access to the board of directors.

Under the National Bank Ordinance, CCPs are required to:

- Have a sound risk management framework for the integrated identification, measurement, management and monitoring of all risks (especially including legal, credit, liquidity, operational and information security risks).⁴³

In defining the procedures and tools to manage credit and liquidity risks, the CCP shall take account of their impact on participants and the financial system. In particular, it shall aim to prevent procyclical effects.⁴⁴

The CCP shall provide tools and incentives for the clearing members to continuously manage and contain the risks to themselves or to the CCP.⁴⁵

- **Compliance policy, procedures and Compliance function.**

Under FINMA Circular 08/24:

- There are detailed provisions related to control functions compliance⁴⁶ and risk control.⁴⁷ The compliance function must be independent from income-earning business and have unrestricted access to all relevant information. It must be staffed adequately and be provided with adequate resources. A member of senior management must be responsible for the compliance function. There must be at least annual reporting directly to the board of directors. Different control functions such as compliance and risk control can only be merged in small organisations if

and Compliance function. In this regard, the Swiss regime includes requirements which are applicable, at a jurisdictional level, to CCPs in Switzerland, and which are broadly equivalent to those of EMIR.

- **Organisational structure and separation of reporting lines.** In this regard, the Swiss regime includes requirements which are applicable, at a jurisdictional level, to CCPs in Switzerland, and which are broadly equivalent to those of EMIR.
- **Remuneration policy.** A Swiss CCP is not required to have a remuneration committee; but it is required to adopt a remuneration policy that promotes risk management and is in the long-term interest of the CCP and avoids conflicts of interest.
- **Information technology systems.** In this regard, the Swiss regime includes requirements which are applicable, at a jurisdictional level, to CCPs in Switzerland, and which are broadly equivalent to those of EMIR.
- **Disclosure.** A Swiss CCP is subject to broadly similar disclosure obligations as a CCP under EMIR with minor differences in the area of disclosing contracts with clearing members and clients, interoperability the arrangements, use of collateral, eligible collateral and applicable haircuts, and a list of clear-

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.

A CCP must identify and analyse potential conflicts of law issues and develop rules and procedures to mitigate legal risks resulting from such issues.¹⁶

A CCP must establish and maintain a permanent and effective compliance function, which operates independently from the other functions of the CCP and has the necessary authority, resources, expertise and access to all relevant information.

A CCP's chief compliance officer must, *inter alia*: (i) monitor the adequacy and effectiveness of a CCP's compliance policies; (ii) administer the compliance policies established by senior management and the board; (iii) report regularly to the board on compliance by the CCP and its employees with EMIR; (iv) establish procedures for the remediation of instances of non-compliance; and (v) ensure that persons involved in the compliance function do not perform the services or activities they monitor.

- **Organisational structure and separation of reporting lines.** A CCP must define the composition, role and responsibilities of board and senior management, and any board committees (including an audit committee and a re-

this does not generate any conflicts of interest.

Under the National Bank Ordinance, CCPs are required to:

- Establish an internal control system and compliance function.⁴⁸

The CCP shall have mechanisms in place that allow clearing members to articulate their needs with regard to the services provided by the CCP or with regard to technical aspects of the CCP.⁴⁹

A CCP is required to establish a risk committee consisting of direct members, indirect members and non-executive board members, which advises the CCP in risk management related matters.⁵⁰

A CCP shall inform the SNB in good time about any significant planned changes with regard to – among others – risk management tools and procedures⁵¹

- **Organisational structure and separation of reporting lines.**

Under the Banking Act, CCPs are required to:

- Have adequate organisational arrangements corresponding to their business activities. Creation of separate bodies for management on the one hand and for direction, supervision and control (i.e. board of directors) on the other. The authorities of the bodies must be segregated in a manner so as to ensure the effective supervision of the CCPs management.⁵²

Under FINMA Circular 08/24:

- The roles and responsibilities of the board of directors are defined. The board of directors is responsible for the direction, supervision and control of the firm's management and has to ensure a control framework is in

ing members.

- **Auditing.** In this regard, the Swiss regime includes requirements which are applicable, at a jurisdictional level, to CCPs in Switzerland, and which are broadly equivalent to those of EMIR.

On balance, the differences highlighted above do not undermine the consistency of the objectives of the Swiss and EMIR regimes.

muneration committee).¹⁷

A CCP's board must be responsible for: (i) establishing the CCP's objectives and strategies; (ii) monitoring of senior management; (iii) establishing appropriate remuneration policies; (iv) establishment of the risk management function and oversight of the risk management, compliance, internal control and outsourcing functions; (v) oversight of compliance with EMIR; and (vi) accountability to shareholders, employees, customers and other stakeholders.¹⁸

A CCP's senior management must be responsible for: (i) ensuring consistency of a CCP's activities with the objectives and strategies determined by the board; (ii) designing and establishing compliance and internal control procedures promoting the CCP's objectives; (iii) regularly reviewing and testing internal control procedures; (iv) ensuring that sufficient resources are devoted to risk management and compliance; (v) the risk control process; and (vi) ensuring that risks posed to the CCP by its clearing and related activities are addressed.¹⁹

A CCP must maintain a clear separation between the reporting lines for risk management and those for the other operations of the CCP.²⁰

A CCP must have clear and direct reporting lines between its board and senior management. The reporting lines for risk management, compliance and internal audit must be clear and separate from those of a CCP's other operations.²¹

- **Remuneration policy.** A CCP must adopt, implement and maintain a remuneration policy which promotes sound and effective risk management and does not create incentives to relax risk standards.²² The policy must be designed, overseen and reviewed at least annually by the remuneration committee. The remuneration policy should be designed to

place that reflects the size and the complexity of the firm.⁵³

Members of the board of directors are required to be qualified and independent.⁵⁴

The board of directors is responsible for the set-up, maintenance and surveillance of an internal control function which corresponds to the size and complexity of the CCP. The board of directors has to make sure all relevant risks are identified, limited and monitored. The board of directors has to discuss the risk position of the CCP with senior management regularly and make sure that employees at all hierarchical levels understand their roles and responsibilities with respect to the management and control of risks. The risk management and control framework is required to be designed in a manner that avoids wrong incentives and conflicts of interest.

The responsibilities of senior management are defined. Senior management has to design adequate processes for the identification, measurement and control of relevant risks and makes sure that roles and responsibilities with respect to risk management and control are clearly defined within the organization and that there is a useful management information system in place.⁵⁵

Requires that senior management installs meaningful separation of responsibilities in order to avoid conflicts of interest.⁵⁶

Requires that internal audit reports directly to the board of directors.⁵⁷

Requires that the compliance function is independent.⁵⁸

Requires that the compliance function has a direct access to senior management.⁵⁹

Requires that the compliance function writes a yearly re-

align the level and structure of remuneration with prudent risk management, taking into account prospective risks as well as existing risks. In the case of variable remuneration, the policy must take into account possible mismatches of performance and risk periods, and ensure payments are deferred appropriately. The fixed and variable components of total remuneration must be balanced and must be consistent with risk alignment. The remuneration of staff engaged in risk management, compliance and internal audit should be independent of the CCP's business performance.²³

The remuneration policy should be independently audited on an annual basis (with the results being made available to the relevant CCPs Competent Authority).²⁴

- **Information technology systems.** A CCP must maintain information technology systems which are adequate to deal with the complexity, variety and type of services and activities it performs.²⁵ In particular, a CCP should ensure that its systems are reliable, secure and resilient (including in stressed market conditions), are scalable, and have sufficient redundancy capacity to process all remaining transactions before the end of the day in circumstances in which a major disruption has occurred.²⁶

A CCP must base its information technology systems on internationally recognized technical standards and industry best practices.

A CCP must maintain a robust information security framework that appropriately manages its information security risk, including policies to protect information from unauthorised disclosure, ensure data accuracy and integrity and guarantee the availability of the CCP's services.²⁷

- **Disclosure.** A CCP must make information relating to the following available to the public free of charge: (i) its governance arrangements; (ii) its rules (including default pro-

port to the board of directors.

Requires that the risk control function is independent.⁶⁰

Requires that the risk control function has direct access to senior management.⁶¹

Requires that the risk control function provides an annual report to the board of directors.⁶²

Under the National Bank Ordinance, CCPs are required to:

- Establish an internal control system and compliance function.⁶³

Clear organisational structure. Well-defined duties, responsibilities, reporting lines, competences, accountability and procedures for board, management, and the internal audit function.⁶⁴

The members of the board and senior management shall have an impeccable reputation and shall possess the experience and skills to perform their mandate.⁶⁵

The board of directors must set – among other things – the risk management framework.⁶⁶

- **Remuneration policy.**

Under FINMA Circular 10/1:

- CCPs are required to implement a remuneration framework that promotes risk management and is in the long-term interest of the CCP.

Under FINMA Circular 08/24:

- Remuneration for persons working in control functions must be designed in such a way as to avoid conflicts of interest.⁶⁷

- **Information technology systems.**

cedures, 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.²⁸

- **Auditing.** A CCP must be subject to frequent and independent audits, the results of which must be communicated to the board and made available to the CCP's Competent Authority.²⁹

A CCP must establish and maintain an internal audit function which is separate and independent from the other functions (including management) and reports directly to the board. Its role is to (i) establish, implement and maintain an audit plan to examine and evaluate the adequacy and effectiveness of the CCP's systems, internal control mechanisms and governance arrangements, (ii) issue recommendations based on the result of work carried out in accordance with item (i), (iii) verify compliance with those recommendations and (iv) report internal audit matters to the board.

Internal audit must assess the effectiveness of a CCP's risk management processes and control mechanisms, in a manner proportionate to the risks faced by the different business lines.

Internal audit assessments must be based on a comprehensive audit plan that is reviewed and reported to its CCPs Competent Authority at least annually.

A CCP should also ensure that audits may be performed on an event-driven basis at short notice.³⁰

A CCP's clearing operations, risk management processes,

Under the National Bank Ordinance, CCPs are required to:

- Manage operational risks and take account of international standards for the management of operational risks, including information security.⁶⁸

Establish an enterprise-wide information security approach and provide for the availability, integrity, confidentiality and auditability of data.⁶⁹

Recover within two hours after a major disruption without the loss of any processing steps.⁷⁰

Have at least two data centres that meet high standards, particularly with regard to physical security, fire protection, power supply, cooling systems and telecommunications infrastructure.⁷¹

- **Disclosure.**

Under the National Bank Ordinance, CCPs are required to:

- Publish their governance structure, the organisational structure, the rights and obligations of the clearing members, the participation requirements as well as the criteria for suspension and exclusion of a clearing member, the rules and procedures in the event of a clearing member's default, the rules and procedures to separately keep, record and transfer the collateral and positions of direct and indirect participants, the aggregate transaction volumes and amounts, the prices and fees charged for the services offered, including conditions for discounts.⁷²

- **Auditing.**

Under the Bank Act, CCPs are required to:

- CCPs are required to have an internal audit function

internal control mechanisms and accounts must be subject to independent audit at least annually.³¹

which is independent from senior management.⁷³

Under FINMA Circular 08/24:

- Defines the set-up and responsibilities of the internal audit function. The internal audit function is required to directly report to the board of directors. The head of the internal audit is to be nominated by the board of directors. The internal audit function must have unlimited access to information within the organisation. The internal audit function must be organised and staffed in proportion to the size and complexity of the CCP. Audit processes have to respect the Professional Practice of the Institute of Internal Auditors (IIA). The audit activity has to be based on risk-based planning which is brought to the attention of the board of directors. The board of directors has to approve the annual audit plan. The internal audit function has to monitor the risk position of the CCP during the year and adapt its audit plan if warranted. The board of directors has to be regularly updated on the changing risk profile of the CCP, audit activities and major findings.⁷⁴

Under the National Bank Ordinance, CCPs are required to:

- Have a clear organisational structure with well-defined duties, responsibilities, reporting lines, competences, accountability and procedures for board, management, and the internal audit function.⁷⁵

Internal audit function independent of management, directly reporting to the board or to a board committee, and with sufficient resources and unfettered access to information.⁷⁶

Senior Management and the board	Senior Management and the board	Senior Management and the board
<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.⁷⁸</p> <p>A CCP must have a board. At least one third, and no less than two, members of the board must be independent.⁷⁹</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.⁸⁰</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.⁸¹ 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.⁸²</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.⁸³</p>	<p>Senior Management and the board</p> <p><i>Under the Banking Act and Banking Ordinance:</i></p> <ul style="list-style-type: none"> Members of the board and the management of the CCP must enjoy a good reputation and assure the proper conduct of business operations .⁸⁴ <p><i>Under the Banking Ordinance:</i></p> <ul style="list-style-type: none"> The board of directors must at least have three members of which none can at the same time be member of the senior management of the CCP.⁸⁵ <p><i>Under FINMA Circular 08/24:</i></p> <ul style="list-style-type: none"> The board of directors is responsible for the set-up, maintenance, and surveillance of an internal control function which corresponds to the size and complexity of the CCP. The board of directors has to make sure that all relevant risks are identified, limited and monitored. The board of directors has to discuss the risk position of the CCP with senior management regularly and make sure that employees at all hierarchical levels understand their roles and responsibilities with respect to the management and control of risks.⁸⁶ <p>At least one third of the board members must fulfil the independence-criteria stated in margin notes 20 – 24 of the circular. The CEO cannot be a member of the board.⁸⁷</p> <p>Independence is defined as: (1) not holding any other function within the organisation within the last 2 years; (2) not being in the function of lead auditor for the organisation within the last 2 years; (3) not maintaining any business relationship with the organisation that could be the source of a conflict of interest; (4) not holding a qualified participation in the organisation or being the repre-</p>	<p>Senior Management and the board</p> <p><i>The Swiss regime for CCPs includes requirements for senior management and the board which are applicable, at a jurisdictional level, to CCPs in Switzerland, and which are broadly equivalent to those in EMIR.</i></p> <p>A Swiss CCP is not required to invite representatives of clients to board meetings for matters relating to transparency and segregation requirements. However, CCPs are required to publicly disclose the same type of information as required under EMIR and the necessary rules and procedures to separately keep, record and transfer the collateral and positions of clients.</p> <p>On balance, these differences do not undermine the consistency of the objectives of the Swiss and EMIR regimes.</p>

	<p>sentative of a qualified investor in the organisation.⁸⁸</p> <p>The board may establish different committees.⁸⁹</p> <p>The CCP must meet detailed provisions concerning the audit committee.⁹⁰</p> <p>A majority of audit committee members must be independent according to the above mentioned criteria.⁹¹ Defines the responsibilities and organisational requirements of the senior management. Senior management have to design adequate processes for the identification, measurement and control of relevant risks and make sure that roles and responsibilities with respect to risk management and control are clearly defined within the organisation and that there is a useful management information system in place.⁹²</p> <p>Senior management are required to install meaningful separation of responsibilities in order to avoid conflicts of interest.⁹³</p> <p>Remuneration for persons working in control functions must be designed in such a way as to avoid conflicts of interest.⁹⁴</p> <p><i>Under the National Bank Ordinance, CCPs are required to:</i></p> <ul style="list-style-type: none"> • Have appropriate corporate governance rules and procedures.⁹⁵ <p>Board members must be of impeccable repute and have appropriate experience and skills.⁹⁶</p> <p>Board to include non-executive members.⁹⁷</p> <p>The board must set the risk management framework. The board must approve recovery and wind-down plan (as in NBO Art. 26), recapitalization plan (as in NBO Art. 31(5)) and business continuity strategy and business continuity</p>	
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	<p>plans (as in NBO Art. 32b(4)).⁹⁸</p> <p>CCP is required to submit the minutes of the board meetings to the SNB.⁹⁹ Publish their governance structure, the organisational structure, the rights and obligations of the clearing members, the participation requirements as well as the criteria for suspension and exclusion of a clearing member, the rules and procedures in the event of a clearing member's default, the rules and procedures to separately keep, record and transfer the collateral and positions of direct and indirect participants, the aggregate transaction volumes and amounts, the prices and fees charged for the services offered, including conditions for discounts.¹⁰⁰</p> <p>CCPs are required to publicly disclose their rules and regulations, the design and operation of the CCP, the system's functionality (including operational and technical functions), organisation, rights and obligations of members, access criteria and procedures for suspension and termination, rules and procedures in case of a member's default, rules and procedures for segregation and portability, aggregate transaction volumes and amounts, prices and fees charged for services offered, including its conditions for discounts, and responses to disclosure requirements of relevant international committees (i.e. CPSS-IOSCO disclosure framework).¹⁰¹</p> <p>CCPs must publicly disclose the necessary rules and procedures to separately keep, record and transfer the collateral and positions of direct and indirect participants.¹⁰²</p> <p><i>Under FINMA Circular 10/1:</i></p> <ul style="list-style-type: none"> • CCPs are required to implement a remuneration framework that promotes risk management and is in the long-term interest of the CCP.¹⁰³ 	
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<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.¹⁰⁴</p> <p>The risk committee should be chaired by an independent member of the board, hold regular meetings and report directly to the board.¹⁰⁵</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.¹⁰⁶ 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 National Bank Ordinance, CCPs are required to:</i></p> <ul style="list-style-type: none"> • Establish a risk committee that is composed of representatives of its clearing members, independent members of the board and clients, which advises the CCP in risk management related matters.¹⁰⁷ 	<p>Risk committee</p> <p><i>The Swiss regime for CCPs includes risk committee requirements which are applicable, at a jurisdictional level, to CCPs in Switzerland, and which are broadly equivalent to those in EMIR.</i></p> <p>EMIR is much more granular with regards to the composition and procedural requirements for the risk committee; however the Swiss regime does require that the risk committee include the same general constituents as EMIR (albeit not in the same fixed percentages). In particular, the Swiss regime does require the presence of clients on the risk committee, which is one of the policy objectives of EMIR.</p> <p>The Swiss regime does not require that the risk committee be chaired by an independent member of the board or report directly to the board. However, the <i>Explanatory Report on the revised NBO</i> explicitly references the EMIR RTS for interpretation purposes which indirectly incorporates this EMIR requirement.</p> <p>On balance, these differences do not undermine the consistency of the objectives of the Swiss and EMIR regimes.</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 to enable its CCPs Competent Authority to monitor the CCP’s</p>	<p>Record keeping</p> <ul style="list-style-type: none"> • General requirements. <p><i>Under the National Bank Ordinance, CCPs are required to:</i></p>	<p>Record keeping</p> <p><i>The Swiss regime for CCPs includes legally binding record keeping requirements which are applicable, at a jurisdictional level, to CCPs in Switzerland, and which</i></p>

<p>compliance with EMIR.¹⁰⁸</p> <p>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).¹⁰⁹</p> <ul style="list-style-type: none"> • General requirements. Such records must be available upon request to the competent authorities, ESMA and the relevant members of the ESCB.¹¹⁰ <p>Records kept by CCPs should facilitate a thorough knowledge of CCPs’ credit exposure towards Clearing Members and allow monitoring of the implied risk. They should enable Competent Authorities, ESMA and the relevant members of the ESCB to adequately re-construct the clearing process, in order to assess compliance with regulatory requirements.¹¹¹</p> <ul style="list-style-type: none"> • 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;¹¹² • Position records. A CCP must maintain records of all positions held by each Clearing Member, including sufficient information to comprehensively and accurately reconstruct the transactions that established the position. Separate records must be kept for each account held for a Clearing Member on an “omnibus client segregation” and “individual client segregation” basis;¹¹³ • 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);¹¹⁴ and • Records of data reported to a trade repository. A CCP must maintain records of all information and data re- 	<ul style="list-style-type: none"> • Document and maintain for at least 10 years all records on the main services provided and activities performed by the CCP.¹¹⁶ In particular CCPs are required to ensure the standardised recording of all details of the transactions cleared by it, the clearing member’s positions, and its reports to trade repositories.¹¹⁷ • Transaction records. <p><i>Under the National Bank Ordinance:</i></p> <ul style="list-style-type: none"> • Transaction records are required to be documented and maintained under the general requirement to ensure the standardised recording of all details of transactions cleared by the CCP.¹¹⁸ • Position records. <p><i>Under the National Bank Ordinance:</i></p> <ul style="list-style-type: none"> • Position records are required to be documented and maintained under the general requirement to ensure the standardised recording of all details of transactions cleared by the CCP and the positions of its clearing members.¹¹⁹ • Business records. <p><i>Under the National Bank Ordinance, CCPs are required to:</i></p> <ul style="list-style-type: none"> • Document and maintain for at least 10 years all records on the main services provided and activities performed by the CCP.¹²⁰ • Records of data reported to a trade repository. <p><i>Under the National Bank Ordinance, CCPs are required to:</i></p> <ul style="list-style-type: none"> • Document and maintain for at least 10 years all records of the transactions cleared by it, the clearing member’s 	<p><i>are broadly equivalent to those in EMIR.</i></p> <p>EMIR is much more granular with regards to the type of records which a CCP must maintain, however the Swiss regime does require the maintenance of the same type of records as EMIR and requires their maintenance for 10 years.</p> <p>In particular, a Swiss 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. However, the <i>Explanatory Report on the revised NBO</i> references the EMIR RTS for interpretation purposes which indirectly incorporates this EMIR requirement. In particular, this guidance advises that CCPs which offer their services to European markets, or to European financial institutions, record the information according to requirements set out in the relevant RTS under EMIR.</p> <p>A Swiss 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. However, the <i>Explanatory Report on the revised NBO</i> reference the EMIR RTS for interpretation purposes which indirectly incorporates this EMIR requirement. In</p>
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<p>quired to be reported to a trade repository (including time and date reported).¹¹⁵</p>	<p>positions, and its reports to trade repositories.¹²¹</p>	<p>particular, this guidance requires that for CCPs which offer their services to European markets, or to European financial institutions, they are advised to record the information and data set out in the relevant RTS under EMIR.</p> <p>On balance, these differences do not undermine the consistency of the objectives of the Swiss and EMIR regimes.</p>
<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 holdings¹²² (“Qualifying Shareholders”).¹²³</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.¹²⁴</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 appropriate measures to remedy the situation (including by withdrawing the CCP’s authorisation).¹²⁵</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;¹²⁶ 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 provi- 	<p>Shareholders and members with qualifying holdings</p> <p><i>Under the Banking Act and Banking Ordinance:</i></p> <ul style="list-style-type: none"> • A CCP will only be provided with a licence by FINMA if natural persons or legal entities, which directly or indirectly participate in at least 10 per cent of the capital or voting rights of a CCP or whose business activities may have significant influence on the CCP (a ‘qualified participant’), have provided FINMA with assurance that their influence will not have a negative impact on a prudent and solid business activity .¹²⁸ 	<p>Shareholders and members with qualifying holdings</p> <p><i>The Swiss regime for CCPs includes requirements for shareholders and members with qualifying holdings which are applicable, at a jurisdictional level, to CCPs in Switzerland, and which are broadly equivalent to those of EMIR.</i></p> <p>Persons who become a shareholder of more than 10% of the voting rights in a Swiss CCP are required to guarantee that their influence will not have a negative impact on the CCP.</p> <p>The requirement for a guarantee has the same objectives as EMIR, namely ensuring that the shareholders of a CCP do not have undue influence over the prudent management of the CCP.</p> <p>On balance, these differences do not undermine the consistency of the objectives of the Swiss and EMIR regimes.</p>



<p>sions, prevent the effective exercise of the Competent Authority’s supervisory functions.¹²⁷</p>		
<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.¹²⁹ 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.¹³⁰ • Changes to Shareholders. Any natural or legal person (or persons acting in concert) (the “proposed acquirer”) who decides to (i) acquire a qualifying holding¹³¹ 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>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</p>	<p>Information to competent authorities</p> <p><i>Under the Banking Act:</i></p> <ul style="list-style-type: none"> • Persons have a duty to notify FINMA prior to acquiring or selling a qualified participation in a CCP organised pursuant to Swiss law. Notification is required as soon as a threshold of 20, 33 or 50 per cent of the capital or voting rights is reached, exceeded or undercut.¹³⁵ <p>All members of the board of directors and of senior management of a CCP are required to be fit and proper. They must have a good reputation and give assurance of their capacity to manage the CCP in a sound manner. FINMA requires CCPs to announce any personnel changes within the board of directors and senior management. Changes are subject to approval by FINMA.¹³⁶</p> <p><i>Under the Banking Act and Banking Ordinance:</i></p> <ul style="list-style-type: none"> • A CCP is required to notify FINMA as soon as the CCP has knowledge about a qualified participant, and within 60 days following the end of the financial year provide FINMA with a detailed list of all qualified participants.¹³⁷ <p><i>Under the FINMASA:</i></p> <ul style="list-style-type: none"> • Supervised persons and entities must provide FINMA with all the information and documents that it requires to carry out its tasks and must also immediately report to FINMA any incident that is of substantial importance to their supervision.¹³⁸ <p><i>Under the National Bank Ordinance, CCPs are required to:</i></p> <ul style="list-style-type: none"> • Submit the minutes of the board of directors’ meetings to 	<p>Information to competent authorities</p> <p><i>The Swiss regime for CCPs includes requirements for the reporting of information to competent authorities regarding changes to management and of shareholders which are applicable, at a jurisdictional level, to CCPs in Switzerland, and which are broadly equivalent to those of EMIR.</i></p>

<p>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. 32.¹³² Within the first 50 working days of the assessment period, the CCPs Competent Authority may request any further information necessary to complete the assessment.¹³³</p> <p>If the CCPs Competent Authority decides to oppose the proposed acquisition, it must inform the proposed acquirer within two working days. If the CCPs Competent Authority does not oppose the proposed acquisition within the assessment period, the proposed acquisition must be deemed approved.¹³⁴</p>	<p>the SNB, which would highlight any changes in the CCP’s management. Also a CCP shall inform the SNB in good time about changes in the ownership structures.¹³⁹</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 	<p>Assessment of qualifying holdings</p> <p><i>Under the Banking Act and Banking Ordinance:</i></p> <ul style="list-style-type: none"> A CCP will only be provided with a licence by FINMA if natural persons or legal entities, which directly or indirectly participate in at least 10 per cent of the capital or voting rights of a CCP or whose business activities may have significant influence on the CCP (a ‘qualified participant’), have provided FINMA with assurance that their influence will not have a negative impact on a prudent and solid business activity.¹⁴⁵ 	<p>Assessment of qualifying holdings</p> <p><i>The Swiss regime for CCPs includes requirements for the assessment of shareholders and members with qualifying holdings which are applicable, at a jurisdictional level, to CCPs in Switzerland, and which are broadly equivalent to those of EMIR.</i></p> <p>EMIR prescribes a range of specific considerations that authorities must make when considering the suitability of a proposed CCP shareholder, and the financial soundness of a proposed acquisition.</p> <p>Such granular considerations are not prescribed under the Swiss regime.</p> <p>However, the requirement for acquirers to provide the Swiss authorities with a</p>

<p>Authorities); and</p> <ul style="list-style-type: none"> • 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.¹⁴⁰ <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.¹⁴¹</p> <p>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.¹⁴² 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.¹⁴³</p> <p>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.¹⁴⁴</p>		<p>guarantee that their influence will not have a negative impact on the CCP has the same objectives as EMIR, namely ensuring that the shareholders of a CCP do not have undue influence over the prudent management of the CCP.</p> <p>On balance, these differences do not undermine the consistency of the objectives of the Swiss and EMIR regimes.</p>
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<p>Conflicts of interest</p> <p>A CCP must maintain effective written organisational and administrative arrangements¹⁴⁶ 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.¹⁴⁷</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.¹⁴⁸</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.¹⁴⁹</p>	<p>Conflicts of interest</p> <p><i>Under the Banking Ordinance:</i></p> <ul style="list-style-type: none"> No member of the board of directors shall belong to the CCP's management (BO Art. 8(2)).¹⁵⁰ <p><i>Under FINMA Circular 08/24:</i></p> <p>All board members are required to have the necessary qualifications, experience and availability to carry out their functions.¹⁵¹</p> <p>The board must make sure that conflicts of interest are addressed.¹⁵²</p> <p>Members of the board must organise their personal and business affairs properly in order to avoid conflicts of interest as far as possible.¹⁵³</p> <p>The management of a CCP must ensure an appropriate segregation of functions and avoid the allocation of conflicting responsibilities.¹⁵⁴</p> <p>The remuneration of representatives of internal audit, compliance and risk control must be designed in such a way as to avoid incentives that could lead to conflicts of interest.¹⁵⁵</p> <p>The independence requirements of board members are defined. In particular, a board member is considered as independent if they do not maintain any business relationship with the CCP which could lead to a conflict of interest. At least one third of board members should be independent. If this requirement is not met, the reasons for non-compliance have to be explained in the CCP's annual report.¹⁵⁶</p> <p><i>Under the National Bank Ordinance, CCPs are required to:</i></p> <ul style="list-style-type: none"> Maintain integrity, confidentiality and auditability of 	<p>Conflicts of interest</p> <p><i>The Swiss regime for CCPs includes conflicts of interest requirements which are applicable, at a jurisdictional level, to CCPs in Switzerland, and which are broadly equivalent to those in EMIR.</i></p> <p>The Swiss regime does not expressly impose a requirement that a CCP disclose conflicts of interest to clearing members and clients, however a CCP is required to identify and address potential conflicts of interest.</p> <p>On balance, this difference does not undermine the consistency of the objectives of the Swiss and EMIR regimes.</p>
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	<p>information, including the prevention of loss, leakage, unauthorised access, negligence, fraud or inappropriate storage.¹⁵⁷</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.¹⁵⁸</p> <p>A CCP must implement and maintain a business continuity policy and disaster recovery plan to ensure the preservation of its functions, the recovery of operations and the fulfilment of its obligations. The disaster recovery plan must at least 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.¹⁵⁹</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.¹⁶⁰ • 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 	<p>Business continuity</p> <p><i>Under the Banking Act:</i></p> <ul style="list-style-type: none"> • CCPs are required to manage their operational risks.¹⁶⁷ <p><i>Under FINMA Circular 08/24:</i></p> <ul style="list-style-type: none"> • CCPs must have emergency solutions that allow them, even in exceptional circumstances, to carry on their activities, and thus to reduce the impact of serious interference with normal business activities.¹⁶⁸ <p><i>Under the National Bank Ordinance, CCPs are required to:</i></p> <ul style="list-style-type: none"> • Apply a company-wide approach to maintaining or recovering business processes in a timely manner in the event of damage or disruption. The CCP shall define the necessary resources (premises, employees, technical facilities, data, external providers) for the individual business areas and assess the impact of any complete or partial loss or disruption of each of these resources with regard to business processes.¹⁶⁹ • Document business continuity arrangements in a business continuity strategy and have a detailed business continuity plan to handle a crisis.¹⁷⁰ • Strategy and policy. <p><i>Under the National Bank Ordinance:</i></p> <ul style="list-style-type: none"> • The board of directors of the CCP shall approve the business continuity strategy and plans.¹⁷¹ • A CCP must have a framework for the management of operational risk, including the identification, measure- 	<p>Business continuity</p> <p><i>The Swiss regime for CCPs includes business continuity requirements which are applicable, at a jurisdictional level, to CCPs in Switzerland, and which are broadly equivalent to those in EMIR.</i></p>

<p>critical functions based on various disaster scenarios¹⁶¹.</p> <ul style="list-style-type: none"> • Disaster recovery. A CCP must maintain a secondary processing site capable of ensuring continuity of all of its critical functions, which must have a geographical risk profile which is different from that of the primary site.¹⁶² • 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.¹⁶³ • 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.¹⁶⁴ • 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.¹⁶⁵ • 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).¹⁶⁶ 	<p>ment, management and monitoring of operational risks.¹⁷²</p> <ul style="list-style-type: none"> • Business impact analysis. <p><i>Under the National Bank Ordinance:</i></p> <ul style="list-style-type: none"> • CCPs must conduct a business impact analysis.¹⁷³ • Disaster recovery. <p><i>Under the National Bank Ordinance:</i></p> <ul style="list-style-type: none"> • The maximum recovery time for a CCP's systemically important functions is not more than 2 hours.¹⁷⁴ <p>CCPs must maintain at least two data processing sites, with a different risk profile to withstand a wider-area disaster. The location to be determined based on a risk analysis.¹⁷⁵</p> <ul style="list-style-type: none"> • Testing and monitoring. <p><i>Under the National Bank Ordinance:</i></p> <ul style="list-style-type: none"> • CCPs must review and test their business continuity plans at least annually, including tests with members and external service providers.¹⁷⁶ <p>CCPs must maintain the integrity, confidentiality and auditability of information.¹⁷⁷</p> <ul style="list-style-type: none"> • Maintenance. <p><i>Under the National Bank Ordinance:</i></p> <ul style="list-style-type: none"> • Subsequent to any major modifications but at least once per annum, a CCP shall review and test its business continuity plans with regard to their implementation and effectiveness, and to ensure that they are up to date.¹⁷⁸ 	
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	<p>Crisis management.</p> <p><i>Under the National Bank Ordinance:</i></p> <ul style="list-style-type: none"> • Crisis management arrangements are required to be part of the recovery or orderly wind-down plan¹⁷⁹ as well as the arrangements for managing operational risks.¹⁸⁰ • Communications. <p><i>Under the National Bank Ordinance:</i></p> <ul style="list-style-type: none"> • The CCP must inform SNB immediately about events that significantly impair the achievement of the information security objectives specified in Article 32a of the NBO.¹⁸¹ <p>Crisis communications are also required to be part of the recovery or orderly wind-down plan¹⁸² as well as the business continuity plan.¹⁸³</p>	
<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, <i>inter alia</i>: (i) outsourcing does not result in the delegation of its responsibilities; (ii) the CCP’s relationship and obligations towards its Clearing Members and their Clients are not altered; (iii) the conditions for authorizing of the CCP do not effectively change, (iv) outsourcing does not prevent the exercise of the CCP’s supervisory and oversight functions, or deprive the CCP 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</p>	<p>Outsourcing</p> <p><i>Under FINMA Circular 08/24 and 08/7:</i></p> <ul style="list-style-type: none"> • A CCP shall remain responsible for any outsourced business activities.¹⁸⁶ <p>The senior management, supervision and control functions of the board as well as key management duties by the management cannot be outsourced. Furthermore it’s not possible to outsource decisions concerning the admission and termination of business relationships.¹⁸⁷</p> <p>In other cases, outsourcing is generally possible without prior admission by FINMA. However, the CCP has to fulfil all the requirements of FINMA Circular 08/7 which include the following principles:</p> <ol style="list-style-type: none"> 1. Outsourced activities have to be clearly defined. 2. The outsourcee has to be carefully selected and con- 	<p>Outsourcing</p> <p><i>The Swiss regime for CCPs includes outsourcing requirements which are applicable, at a jurisdictional level, to CCPs in Switzerland, and which are broadly equivalent to those of EMIR.</i></p> <p>The Swiss regime does not require the formal prior approval of the Swiss authorities before a CCP may outsource major activities linked to risk management. However, CCPs in Switzerland are not permitted to outsource key management duties by management or decisions concerning the admission and termination of business relationships. CCPs shall also remain responsible for any outsourced business activities.</p>

<p>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.¹⁸⁴</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. ¹⁸⁵</p>	<p>stantly monitored.</p> <ol style="list-style-type: none"> 3. The outsourcing party retains full responsibility for outsourced activities. 4. Outsourcer and outsourcee have to agree on a written data security framework that takes into account all possible emergency situations. 5. The outsourcee has to respect data protection and confidentiality requirements. 6. Clients of the outsourcing party have to be informed if their personal data is transferred to an outsourcee. 7. FINMA as well as internal and external auditors of the outsourcing party must have full access to the outsourcee and can carry out on-site audits. This must also be possible if the outsourcee is in a foreign country. 8. The legal basis of the outsourcing relationship has to be clearly defined. <p><i>Under the National Bank Ordinance:</i></p> <ul style="list-style-type: none"> • CCPs must conduct due diligence in the selection and control of their provider of outsourced activities. ¹⁸⁸ • CCPs must integrate their outsourced functions into their internal control system and monitor the performance of the service provider on an on-going basis. ¹⁸⁹ • CCPs remain fully responsible for complying with their obligations for all outsourced activities. ¹⁹⁰ • There must be an outsourcing contract between the CCP and service provider to determine the services to be provided. ¹⁹¹ • The SNB or any party mandated by the SNB can control, 	<p>On balance, this difference does not undermine the consistency of the objectives of the Swiss and EMIR regimes.</p>
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	<p>oversee or audit the outsourced services. ¹⁹²</p> <p>Early notification must be provided to the SNB for intended new or changes to existing outsourcing arrangements. ¹⁹³</p>	
<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. ¹⁹⁴</p> <p>A CCP must have accessible, transparent and fair rules for the prompt handling of complaints. ¹⁹⁵</p>	<p>Conduct of business rules – general provisions</p> <p><i>Under the National Bank Ordinance:</i></p> <ul style="list-style-type: none"> • CCPs must have mechanisms in place to take into account the best interests and needs of members. ¹⁹⁶ CCPs are required to establish a risk committee consisting of direct members, indirect members and non-executive board members, which advises the CCP in risk management related matters. ¹⁹⁷ 	<p>Conduct of business rules – general provisions</p> <p><i>The Swiss regime for CCPs includes general conduct of business requirements which are applicable, at a jurisdictional level, to CCPs in Switzerland, and which are broadly equivalent to those in EMIR.</i></p> <p>A Swiss CCP is not specifically required to have accessible, transparent and fair rules for the prompt handling of complaints. However, a CCP is required to have mechanisms in place to take into account the best interests of members and ensure that conflicts of interest are addressed.</p> <p>On balance, this difference does not undermine the consistency of the objectives of the Swiss 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</p>	<p>Participation requirements</p> <p><i>Under the National Bank Ordinance:</i></p> <ul style="list-style-type: none"> • CCPs must offer non-discriminatory and open access, ²⁰³ restrictions to participation in the CCP must be based only on safety and efficiency grounds. To control risk, CCPs may make participation conditional upon the fulfilment of operational, technical, financial and legal requirements. ²⁰⁴ If efficiency grounds are claimed for refusing participation, the SNB shall consult the Competition 	<p>Participation requirements</p> <p><i>The Swiss regime for CCPs includes participation requirements which are applicable, at a jurisdictional level, to CCPs in Switzerland, and which are broadly equivalent to those in EMIR.</i></p>



<p>control risk.¹⁹⁸</p> <p>Clearing members that clear transactions on behalf of their clients must have the necessary additional financial resources and operational capacity to perform this activity. The CCP's rules for clearing members must allow it to gather relevant basic information to identify, monitor and manage relevant concentrations of risk relating to the provision of services to clients. Clearing Members must, upon request, inform the CCP about the criteria and arrangements they adopt to allow their Clients to access the services of the CCP. Responsibility for ensuring that Clients comply with their obligations remains with Clearing Members.¹⁹⁹</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.²⁰⁰</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.²⁰¹</p> <p>A CCP must ensure the application of the above criteria on an on-going basis and must annually conduct a comprehensive review of compliance with these provisions by its Clearing Members.²⁰²</p>	<p>Commission as part of its assessment.²⁰⁵</p> <p>The CCP shall monitor compliance with its participation requirements on an on-going basis and define criteria and procedures for the suspension and exclusion of clearing members that no longer fulfil the participation requirements.²⁰⁶</p> <p>The CCP shall immediately notify the clearing member²⁰⁷ and inform the SNB, FINMA, and any other responsible supervisory authorities immediately²⁰⁸ of a clearing member's suspension or exclusion.</p> <p>A CCP must have clear and enforceable contractual rules covering among others the criteria for participation, suspension and exclusion of members.²⁰⁹</p> <p>The CCP shall identify, measure, manage and monitor the risks to the CCP arising from visible indirect participants.²¹⁰</p>	
<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</p>	<p>Transparency</p> <p><i>Under the National Bank Ordinance:</i></p> <ul style="list-style-type: none"> • CCPs shall immediately notify their clearing members of 	<p>Transparency</p> <p><i>The Swiss regime for CCPs includes transparency requirements which are applicable, at a jurisdictional level, to CCPs in Switzerland, and which are broadly</i></p>



<p>from such reductions).²¹¹</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.²¹²</p> <p>A CCP must allow its Clearing Members and Clients separate access to the specific services provided.²¹³</p> <p>A CCP must inform Clearing Members and their Clients of the risks associated with the services provided.²¹⁴</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.²¹⁵</p>	<p>their suspension or exclusion.²¹⁶</p> <p>CCPs must provide incentives and offer instruments to members to monitor, manage and contain the risks participation in the CCP poses to them or to the CCP.²¹⁷</p> <p>CCPs are required to publicly disclose their governance structure, their rules and regulations, the design and operation of the CCP, the system's functionality (including operational and technical functions), organisation, rights and obligations of members, access criteria and procedures for suspension and termination, rules and procedures in case of a member's default, rules and procedures for segregation and portability, aggregate transaction volumes and amounts, prices and fees charged for services offered, including its conditions for discounts, and responses to disclosure requirements of relevant international committees (i.e. CPSS-IOSCO disclosure framework).²¹⁸</p> <p>CCPs must submit an annual report to the SNB.²¹⁹</p>	<p><i>equivalent to those in EMIR.</i></p> <p>A Swiss CCP is not specifically required to disclose: to the public, the volumes of cleared transactions for each class of instruments cleared. However, a Swiss CCP is required to disclose aggregate figures of cleared transactions.</p> <p>A Swiss CCP is not specifically required to disclose to clearing members, any breaches by clearing members of the CCP's participation requirements. However, a Swiss CCP is required provide incentives and offer instruments to members to monitor, manage and contain the risks participation in the CCP poses to them or to the CCP.</p> <p>A Swiss CCP is not specifically required to disclose to clearing members the price information used to calculate its end-of-day exposures to its clearing members. However, a Swiss CCP is required to disclose their rules and regulations, the design and operation of the CCP and the system's functionality (including operational and technical functions). CCPs must also provide instruments to clearing members to enable them to monitor, manage and contain the risks that participation in the CCP poses to them.</p> <p>A Swiss CCP is not specifically required to allow its clearing members and clients separate access to specific services it provides nor is it required to price each service separately. However, a CCP is</p>
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		<p>required to have mechanisms in place to take into account the best interests of members and ensure that conflicts of interest are addressed. Swiss CCPs must offer non-discriminatory and open access with any restrictions on participation in the CCP limited to safety and efficiency grounds. .</p> <p>On balance, these differences do not undermine the consistency of the objectives of the Swiss and EMIR regimes.</p>
<p><i>Segregation and portability</i></p> <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”).²²⁰</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</p>	<p><i>Segregation and portability</i></p> <p><i>Under the National Bank Ordinance:</i></p> <ul style="list-style-type: none"> • CCPs must keep separate records and accounts and segregate: (i) clearing members’ positions and collateral from those of the CCP, (ii), a clearing member’s positions and collateral from those of another clearing member, (iii) a clearing member’s’ positions and collateral from those of an indirect clearing member unless the clearing member itself undertakes or is required to perform such segregation.²²⁶ <p>CCPs must offer their clearing members a choice to segregate indirect clearing members’ positions and collateral either by means of omnibus client segregation or individual account client segregation.²²⁷</p> <p>CCPs must establish rules and take technical and operational measures to port positions and collateral of indirect members in case of a default of a direct member. If portability is not enforceable according to applicable law, a CCP must establish alternative procedures which provide similar protection for indirect members.²²⁸</p>	<p><i>Segregation and portability</i></p> <p><i>The Swiss regime for CCPs includes segregation and portability requirements which are applicable, at a jurisdictional level, to CCPs in Switzerland, and which are broadly equivalent to those in EMIR.</i></p> <p>Disclosure requirements are less granular with regard to segregation and portability. However, the <i>Explanatory report on the revised NBO</i> references the EMIR RTS for interpretation purposes which indirectly incorporates this EMIR requirement.</p> <p>There are currently no provisions in the Swiss regime directed towards clearing members with regards to their relationship with clients (e.g., no requirement for clearing members to post excess margin to the CCP where a client elects individual account client segregation and no requirement for clearing members to offer clients individual segregation or omnibus account segregation – despite CCPs having to offer such). However, this gap regarding</p>

<p>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.²²¹</p> <p>CCPs and Clearing Members must publicly disclose the levels of protection offered, including the costs and main legal implications (including information relating to treatment on insolvency) of each level of protection and must offer those services on reasonable commercial terms.²²²</p> <p>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).²²³</p> <p>The requirement to distinguish assets and positions with the CCP in accounts is satisfied where:</p> <ul style="list-style-type: none"> (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.²²⁴ <p>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.²²⁵</p>	<p>CCPs must publicly disclose the necessary rules and procedures to separately keep, record and transfer the collateral and positions of direct and indirect participants .²²⁹</p> <p>CCPs must disclose their investment strategy to their clearing members, in particular regarding the possible re-use of the collateral the clearing members have provided.²³⁰</p>	<p>requirements for clearing members does not specifically concern the regime for CCP requirements, and is therefore not relevant for this assessment. In any event, this aspect is expected to be addressed in the forthcoming Financial Market Infrastructure Act.</p> <p>The Swiss regime does not specifically require CCPs to publicly disclose a right of use with respect to margins or default fund contributions. However, a CCP is required to publicly disclose key aspects concerning rules and procedures to keep, record and transfer the collateral and positions of direct and indirect participants. Additionally, a CCP is required to disclose the investment strategy vis-à-vis its clearing members, in particular regarding the possible re-use of the collateral they have provided.</p> <p>It is currently unclear whether Swiss insolvency law supports the portability of collateral and positions. If this is not the case, CCPs are required in the revised NBO to establish alternative procedures providing similar protection for clients. This should ensure equivalent protection compared to EMIR for clearing members and clients. The uncertainties regarding insolvency law are expected to be addressed in the forthcoming Financial Market Infrastructure Act.</p> <p>On balance, these differences do not undermine the consistency of the objectives of the Swiss and EMIR regimes.</p>
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<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.²³¹</p>	<p>Exposure management</p> <p><i>Under the National Bank Ordinance, CCPs are required to:</i></p> <ul style="list-style-type: none"> Identify, measure, manage and monitor credit risk.²³² Have the ability and right to call and collect margins on an intraday basis.²³³ Mark-to-market the value of their positions with current market prices.²³⁴ Use variation margins to cover current exposures.²³⁵ 	<p>Exposure management</p> <p><i>The Swiss regime for CCPs includes exposure management requirements which are applicable, at a jurisdictional level, to CCPs in Switzerland, and which are broadly equivalent to those of EMIR.</i></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.²³⁶</p> <p>CCPs should follow principles to adequately tailor their margin levels to the characteristics of each financial instrument or portfolio they clear.²³⁷ 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.²³⁸ A CCP must adopt models and parameters in setting its margin requirements that capture the risk characteristics of the products cleared and take into account the interval between margin collections, market liquidity and the possibility of changes over the duration of the transaction. The models and parameters must be validated by the Competent</p>	<p>Margin requirements</p> <ul style="list-style-type: none"> • Percentage. <p><i>Under the National Bank Ordinance, CCPs are required to:</i></p> <ul style="list-style-type: none"> • Use initial margin to cover future exposure with a confidence interval of at least 99% (99.5% for OTC derivatives).²⁵⁰ • Time horizon for the calculation of historical volatility. <p><i>Under the National Bank Ordinance, CCPs are required to:</i></p> <ul style="list-style-type: none"> • Use margin calculations that are based on at least 12 months of historical volatility data.²⁵¹ • Time horizons for the liquidation period. <p><i>Under the National Bank Ordinance, CCPs are required to:</i></p> <ul style="list-style-type: none"> • Use liquidation assumptions for their initial margin calculations that are equal to at least 2 days (5 days for OTC derivatives).²⁵² 	<p>Margin requirements</p> <p><i>The Swiss regime for CCPs includes margin requirements which are applicable, at a jurisdictional level, to CCPs in Switzerland, and which are broadly equivalent to those in EMIR.</i></p> <p>A Swiss CCP is not specifically required to have its margin models reviewed and validated by a qualified and independent party, or by the Swiss authorities. However, the adequacy and effectiveness of a CCP’s risk management – including the margin model – must be reviewed regularly by a qualified internal or external body. The SNB may set requirements regarding the scope and depth of the assessments.</p> <p>With regards to portfolio margining, unlike CCPs under EMIR, a Swiss CCP is not limited to a maximum reduction of 80% of the difference between (i) the sum of the initial margin requirement for each</p>

<p>Authority and subject to an opinion in accordance with Article 19.²³⁹</p> <p>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.²⁴⁰</p> <p>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).²⁴¹</p> <ul style="list-style-type: none"> • 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%.²⁴² All classes of financial instruments are also subject to a criteria-based approach that could increase the required confidence interval. The criteria-based approach should take into account factors including: (i) the complexities and level of pricing uncertainties of the class of financial products; (ii) the risk characteristics of the class (including volatility, duration, liquidity, non-linear price characteristics, jump to default risk and wrong way risk); (iii) the degree to which other risk controls do not adequately limit credit exposure; and (iv) the inherent leverage of the class of financial instrument (including volatility, concentration and difficulties in closing out).²⁴³ <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</p>	<ul style="list-style-type: none"> • Portfolio margining. <i>Under the National Bank Ordinance, CCPs are required to:</i> <ul style="list-style-type: none"> • Use offsets of member’s open positions for the calculation of margins that are based on the correlation of the underlying financial instruments.²⁵³ • Procyclicality. <i>Under the National Bank Ordinance, CCPs are required to:</i> <ul style="list-style-type: none"> • Use risk management instruments (including margins, collateral policy, etc) which avoid procyclical effects.²⁵⁴ <p>Have the adequacy and effectiveness of their risk management reviewed regularly by a qualified internal or external body. The SNB may set requirements regarding the scope and depth of the assessments.²⁵⁵</p> 	<p>instrument calculated on an individual basis and (ii) the initial margin requirement calculated based on a combined estimation of the exposure for the combined portfolio. However portfolio margining is required to be based on the correlation of the underlying financial instruments and the margin collected is required to continue to meet a confidence level of at least 99 per cent (99.5 per cent) for OTC derivatives) under extreme but plausible market conditions.</p> <p>On balance, these differences do not undermine the consistency of the objectives of the Swiss and EMIR regimes.</p>
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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.²⁴⁴

CCPs must inform the Competent Authority and their Clearing Members of the criteria used to determine the margin percentage for each class of financial instruments.

- **Time horizon for the calculation of historical volatility.** A CCP must calculate IM using historical volatility data from at least the latest 12-month period, which must capture a full range of market conditions, including periods of stress. 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.²⁴⁵
- **Time horizons for the liquidation period.** The liquidation period used to calculate IM must be at least: (i) for OTC derivatives, 5 business days; and (ii) for other financial instruments, 2 business days, it being specified that the CCP must take into account relevant criteria (including characteristics of the financial instruments, markets where they are traded, period for calculation and collection of margin).²⁴⁶ 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. ²⁴⁷ 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 demonstrates resilience over stressed scenarios. The maximum reduction is 80% of the difference between (i) the sum of the IMs for each instrument calculated on an individual basis and (ii) the IM 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.²⁴⁸
- **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.²⁴⁹

<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 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.²⁵⁶</p> <p>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.²⁵⁷ A CCP may establish more than one default fund for the different classes of financial instruments that it clears.²⁵⁸</p> <ul style="list-style-type: none"> • 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.²⁵⁹ • Identifying extreme but plausible market conditions. This framework must: <ul style="list-style-type: none"> (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; 	<p>Default fund</p> <ul style="list-style-type: none"> • Framework and governance. <p><i>Under the National Bank Ordinance:</i></p> <ul style="list-style-type: none"> • Margins and the CCP’s default fund are required to cover current and potential credit risk under a variety of scenarios, including the default of the clearing member (including its affiliates) with the largest exposure to the CCP, the clearing member (including its affiliates) with the second largest exposure to the CCP, and combined default of the clearing members (including their affiliates) with the largest and the second largest exposure to the CCP, under extreme but plausible market conditions.²⁶² <p>The board of directors must set out the basic risk management principles of the CCP.²⁶³</p> <ul style="list-style-type: none"> • Identifying extreme but plausible market conditions. <p><i>Under the National Bank Ordinance:</i></p> <ul style="list-style-type: none"> • Extreme but plausible market conditions are determined on the basis of the largest price fluctuations which have been observed over the last 30 years, or which are considered possible in the future.²⁶⁴ • Reviewing extreme but plausible scenarios. <p><i>Under the National Bank Ordinance:</i></p> <ul style="list-style-type: none"> • The CCP must assess on a monthly basis the scenarios, models, assumptions and parameters underlying its stress tests²⁶⁵ and at least annually in a comprehensive manner its credit risk management model.²⁶⁶ <p>A CCP shall have the adequacy and effectiveness of its risk management reviewed regularly by a qualified internal or</p>	<p>Default fund</p> <p><i>The Swiss regime for CCPs includes default fund requirements which are applicable, at a jurisdictional level, to CCPs in Switzerland, and which are broadly equivalent to those in EMIR.</i></p> <p>The Swiss regime does not specifically require a CCP’s board to annually or more frequently review its minimum financial resources framework. However, a CCP’s board sets out the basic risk management principles for the CCP, which include margining and default fund calibrations. Also, Swiss CCPs must have sufficient financial resources to cover their stress scenarios and regularly assess compliance with this requirement. Swiss CCPs are also required to periodically review different aspects of their risk management framework.</p> <p>On balance, these differences do not undermine the consistency of the objectives of the Swiss and EMIR regimes.</p>
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<p>(c) reflect additional risks to the CCP arising from the 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.²⁶⁰</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.²⁶¹ 	<p>external body. The SNB may set requirements regarding the scope and depth of the assessments.²⁶⁷</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 CPP and may not be used to meet a CCP’s regulatory capital requirements under EMIR, Art. 16.²⁶⁸</p> <p>A CCP may require a non-defaulting Clearing Member to provide</p>	<p>Other financial resources</p> <p><i>Under the National Bank Ordinance:</i></p> <ul style="list-style-type: none"> • Margins and the CCP’s default fund are required to cover current and potential credit risk under a variety of scenarios, including the default of the clearing member (including its affiliates) with the largest exposure to the CCP, the clearing member (including its affiliates) with the second largest exposure to the CCP, and the combined default of the clearing members (including their affiliates) with the largest and the second largest exposures to the CCP, under extreme but plausible market conditions.²⁷⁰ 	<p>Other financial resources</p> <p><i>The Swiss regime for CCPs includes other financial resources requirements which are applicable, at a jurisdictional level, to CCPs in Switzerland, and which are broadly equivalent to those in EMIR.</i></p> <p>Clearing members are not required to have limited exposures to a Swiss CCP. However, CCPs must provide incentives and offer instruments to members to monitor, manage and contain the risks participation in the CCP poses to them.</p>

<p>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.²⁶⁹</p>		<p>On balance, these differences do not undermine the consistency of the objectives of the Swiss and EMIR regimes.</p>
<p>Liquidity risk controls</p> <p>A CCP must at all times have access to adequate liquidity to perform its services and activities.²⁷¹ 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.²⁷²</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 future liquidity needs under a wide range of stress scenarios, including the default of the two Clearing Members to which it has the largest exposure from the date of default until the end of the liquidation period; and (ii) the liquidity risk generated by its investment policy in extreme but plausible conditions.²⁷³ <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,</p>	<p>Liquidity risk controls</p> <ul style="list-style-type: none"> • Assessment of liquidity risk. <p><i>Under the Banking Act:</i></p> <ul style="list-style-type: none"> • CCPs must maintain individually and on a consolidated basis appropriate capital and liquidity.²⁷⁶ <p><i>Under the Liquidity Ordinance:</i></p> <p>CCPs must always have sufficient liquidity to meet their payment obligations also in stress situations.²⁷⁷</p> <p>CCPs are obliged to manage their liquidity risks according to their size and nature, scale, complexity and risk, at financial group and individual institution level. They have to hold a liquidity buffer as protection against stress situations.²⁷⁸</p> <p>CCPs are required to define the extent to which they are willing to take liquidity risk (liquidity risk tolerance).²⁷⁹</p> <p>CCPs are required to set strategies for the management of liquidity risk in accordance with their liquidity risk tolerance.²⁸⁰</p> <p>CCPs are required to consider their liquidity costs and risks for all major on-balance sheet and off-balance sheet business activities, especially in the setting of prices, the introduction of new products and the measurement of performance.²⁸¹</p> <p>CCPs are required to set up appropriate processes for</p>	<p>Liquidity risk controls</p> <p><i>The Swiss regime for CCPs includes liquidity requirements which are applicable, at a jurisdictional level, to CCPs in Switzerland, and which are broadly equivalent to those in EMIR.</i></p> <p>The Swiss regime requires that CCPs avoid concentrations in collateral and requires that they diversify liquidity providers, but does not prescribe a specific threshold of 25%. However, the <i>Explanatory Report on the revised NBO</i> references the EMIR RTS for interpretation purposes which indirectly incorporates this EMIR requirement.</p> <p>On balance, this difference does not undermine the consistency of the objectives of the Swiss and EMIR regimes.</p>

assessing timescales over which liquid financial resources should be available, processes in the event of liquidity shortfalls, etc.).

The CCP should assess the liquidity risk it faces including where the CCP or its Clearing Members cannot settle their payment obligations when due as part of the clearing or settlement process, taking also into account the CCP's investment activities. The risk management framework must address the liquidity needs stemming from the CCP's relationship with any entity towards which the CCP has a liquidity exposure, including settlement banks, payment systems, securities settlement systems, liquidity providers, custodian banks, etc. as well as interdependencies between such entities.

- **Access to liquidity.** A CCP must maintain, in each relevant currency, liquid resources commensurate with its liquidity requirements, which are limited to: (i) cash deposited at a central bank; (ii) cash deposited at authorised credit institutions; (iii) committed 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.²⁷⁴
- **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.²⁷⁵

identifying, assessing, managing and monitoring liquidity risk. In particular CCPs have to create a liquidity overview for a range of time buckets with a comparison of the expected cash inflows and outflows per bucket from on-balance sheet and off-balance sheet items.²⁸²

CCPs are required to identify, control and monitor the liquidity risk and financing needs of the financial group and of those legal entities, business lines and currencies of significance from a liquidity risk perspective. They are required to take into account legal, regulatory and operational limitations to the transferability of liquidity.²⁸³

CCPs are required to identify, control and monitor the intra-day liquidity risks, making sure that the liquidity risks entered into do not affect the payment and settlement obligations and systems.²⁸⁴

Under FINMA Circular 13/6:

CCPs are required to meet certain reporting requirements for short-term liquidity coverage ratios and qualitative requirements for liquidity risk management.²⁸⁵

Under the National Bank Ordinance:

CCPs are required to identify, measure, manage and monitor liquidity risks using appropriate procedures and instruments.²⁸⁶

CCPs are required to maintain sufficient liquidity to fulfil payment obligations in all relevant currencies under a wide range of stress scenarios. CCPs must apply haircuts which are also appropriate under extreme but plausible market conditions.²⁸⁷ These scenarios must include (i) default of the one and the two

	<p>clearing member(s) (including their affiliates) which would provide for the largest payment exposure, (ii) the default of the largest liquidity provider in each of the five currencies in which the CCP has the largest payment obligations.²⁸⁸</p> <ul style="list-style-type: none"> • Access to liquidity. <p><i>Under the Liquidity Ordinance:</i></p> <ul style="list-style-type: none"> • CCPs are required to monitor the assets backing their liquidity generation, and distinguish between encumbered and unencumbered assets. They must always know where assets are held and how they can be mobilised in a timely manner.²⁸⁹ <p>CCPs are required to take measures to reduce their liquidity risk. They must have a particular limit system and a financing structure that is adequately diversified by source and maturity.²⁹⁰</p> <p>CCPs are required to prepare various stress scenarios, based on which they perform stress tests on their liquidity positions, including off-balance sheet positions.²⁹¹</p> <p>CCPs are required to draw up a contingency plan that includes effective strategies for dealing with liquidity problems. They are required to define the responsibilities, lines of communication and the necessary measures in an appropriate form in internal policies and guidelines.²⁹²</p> <p><i>Under the National Bank Ordinance:</i></p> <p>CCPs are required to apply haircuts to liquid resources and regularly test compliance with requirements their liquidity requirements.²⁹³</p> <p>Liquid resources are cash at central banks and cre-</p>	
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	<p>ditworthy financial institutions, assets which can be converted into cash through market liquidation any time, assets which can be converted into cash using committed credit or repo lines, and uncollateralized committed credit lines in relevant currencies.²⁹⁴</p> <ul style="list-style-type: none"> • Concentration limits. <p><i>Under the National Bank Ordinance:</i></p> <ul style="list-style-type: none"> • CCPs are required to avoid concentrations in collateral and assets and to diversify liquidity providers. CCPs are also required to evaluate the creditworthiness of their liquidity providers and the ability of those providers to meet their commitments.²⁹⁵ <p>CCPs are required to avoid procyclical effects in managing liquidity risk.²⁹⁶</p>	
<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.²⁹⁷</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 	<p>Default waterfall</p> <ul style="list-style-type: none"> • Calculation and maintenance of the amount of the CCP’s own resources to be used in the default waterfall. <p><i>Under the National Bank Ordinance:</i></p> <ul style="list-style-type: none"> • CCPs are required to establish a default-waterfall consisting of the following sequence: (1) margins of defaulted clearing member, (2) pre-funded default fund contributions of the defaulted clearing member, (3) dedicated own resources of the CCP in a substantial size related to the CCPs capital (‘skin in the game’), (4) pre-funded default fund contributions of non-defaulting clearing members, .³⁰⁰ • Maintenance of the amount of the CCP’s own resources to be used in the default waterfall. 	<p>Default waterfall</p> <p><i>The Swiss regime for CCPs includes default waterfall requirements which are applicable, at a jurisdictional level, to CCPs in Switzerland, and which are broadly equivalent to those in EMIR.</i></p> <p>A Swiss 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. However, the <i>Explanatory Report on the revised NBO</i> reference the EMIR RTS for interpretation purposes which indirectly incorporates this EMIR requirement.</p> <p>On balance, this difference does not undermine the consistency of the objectives</p>

<p>least equal 25% of the CCP’s minimum capital (including retained earnings and reserves) pursuant to EMIR, Art. 16.²⁹⁸ 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).²⁹⁹ 	<p><i>Under the National Bank Ordinance:</i></p> <ul style="list-style-type: none"> • A CCP is required to inform the SNB immediately about events that lead to non-compliance with the requirements regarding the management of credit and liquidity risks, e.g. if the amount of dedicated financial resources falls below the required amount.³⁰¹ 	<p>of the Swiss and EMIR regimes.</p>
<p>Collateral requirements</p> <p>A CCP must only accept highly liquid collateral with minimal credit and market risk to cover initial and on-going exposure to its Clearing Members. Bank guarantees may be posted as collateral by non-financial counterparties, provided that the CCP takes such guarantees into account when calculating exposure to a bank that is a Clearing Member. A CCP must apply adequate haircuts to reflect the potential for collateral’s value to decline over the interval between their last revaluation and the time by which they can be liquidated, taking into account the liquidity risk that may follow the default of a market participant and the concentration risk on certain assets.³⁰²</p> <ul style="list-style-type: none"> • 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 fi- 	<p>Collateral requirements</p> <ul style="list-style-type: none"> • General policies, valuing collateral, cash collateral, financial instruments, bank guarantees and gold. <p><i>Under the National Bank Ordinance:</i></p> <ul style="list-style-type: none"> • Acceptable collateral is that which is liquid and exhibits low credit and market risk.³⁰⁸ <p>CCPs are required to have immediate access to collateral, including cross-border collateral.³⁰⁹</p> <p>CCPs are required to mark-to-market their collateral with current market prices.³¹⁰</p> <p>CCPs are required to measure and monitor all types of credit risks and to take appropriate actions, if nec-</p>	<p>Collateral requirements</p> <p><i>The Swiss regime for CCPs includes collateral requirements which are applicable, at a jurisdictional level, to CCPs in Switzerland, and which are broadly equivalent to those in EMIR. However, Switzerland has taken an approach which is less granular than EMIR.</i></p> <p>The Swiss regime does not specify the types of collateral that are deemed liquid or a criteria-based approach to determine whether assets are liquid. However, the <i>Explanatory Report on the revised NBO</i> references the EMIR RTS for interpretation purposes which indirectly incorporates this</p>

<p>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.³⁰³</p> <ul style="list-style-type: none"> • 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.³⁰⁴ • Financial instruments, bank guarantees and gold. A criteria-based approach should be followed to determine other types of assets that can be considered highly liquid (including financial instruments, bank guarantees, and gold). There is no requirement for a minimum amount of collateral to be in cash.³⁰⁵ • 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 	<p>essary.³¹¹</p> <ul style="list-style-type: none"> • Haircuts. <p><i>Under the National Bank Ordinance:</i></p> <ul style="list-style-type: none"> • Haircuts on collateral are required to be prudently calculated and appropriate for extreme but plausible market conditions, as well as regularly validated.³¹² • Concentration limits. <p><i>Under the National Bank Ordinance:</i></p> <ul style="list-style-type: none"> • CCPs are required to avoid concentration risks in accepted collateral and to establish and monitor concentration limits.³¹³ 	<p>EMIR requirement.</p> <p>The Swiss regime does not specifically address whether CCPs may accept as collateral the underlying asset of a derivative contract the financial instrument that generates the CCP exposure, or bank guarantees or gold. However a Swiss CCP is restricted to accepting only those financial instruments with low credit and market and risks which are the underlying minimum criteria under EMIR.</p> <p>The Swiss 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. However, the <i>Explanatory Report on the revised NBO</i> references the EMIR RTS for interpretation purposes which indirectly incorporates this EMIR requirement.</p> <p>On balance, these differences do not undermine the consistency of the objectives of the Swiss and EMIR regimes.</p>
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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.³⁰⁶

- **Concentration limits.** A CCP must establish and implement policies to ensure that the collateral remains sufficiently diversified to allow its liquidation within a defined holding period without a significant market impact; such policies must include risk mitigation procedures to be applied when the concentration limits are exceeded.

A CCP must determine concentration limits at the levels of individual issuers, types of issuer, 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

<p>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.³⁰⁷</p>		
<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.³¹⁴</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 	<p>Investment policy</p> <ul style="list-style-type: none"> • Highly liquid financial instruments. <p><i>Under the National Bank Ordinance:</i></p> <ul style="list-style-type: none"> • CCPs are required to invest in liquid assets with low credit and market risk.³²¹ • Highly secured arrangements for the deposit of financial instruments. <p><i>Under the National Bank Ordinance:</i></p> <ul style="list-style-type: none"> • CCP are required to identify, measure, manage and monitor investment and custody risk.³²² <p>CCPs are required to take measures to minimise custody risk, in particular by holding assets with supervised and creditworthy entities.³²³</p> <p>The assets posted to a CCP by clearing members are required to be segregated from the assets of the CCP or those of other members.³²⁴</p> <p>If a CCP places its own assets or assets posted to it by clearing members in the custody of a third party, the CCP is required to minimise the associated risks. In</p>	<p>Investment policy</p> <p><i>The Swiss regime for CCPs includes investment policy requirements which are applicable, at a jurisdictional level, to CCPs in Switzerland, and which are broadly equivalent to those in EMIR.</i></p> <p>The Swiss 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. However, the <i>Explanatory Report on the revised NBO</i> references the EMIR RTS for interpretation purposes which indirectly incorporates this EMIR requirement.</p> <p>The Swiss regime does not specifically prohibit a CCP from investing its capital in its own securities. However a Swiss CCP is restricted to investing in only those financial instruments with low credit and market risk which are the underlying minimum criteria under EMIR.</p> <p>The Swiss regime does not specifically</p>

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.³¹⁵

- **Highly secured arrangements for the deposit of financial instruments.** Financial instruments posted with a CCP as margin or default fund contributions must be deposited with operators of securities settlement systems that ensure the full protection of such financial instruments. If unavailable, other highly 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).³¹⁶
- **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 45³¹⁷.

Where a CCP deposits assets with a third party, it must ensure that the assets belonging to the Clearing Members are identifiable separately from the assets belonging to the CCP and from assets belonging to that third party by means of differently titled accounts on the books of the third party or any other equivalent measures that achieve the same level of protection. A CCP must have prompt access to the financial instruments when

particular, the CCP must place the assets with creditworthy and – if possible – supervised financial institutions, and take measures to ensure that the CCP can access the collateral and assets immediately.³²⁵

- **Highly secured arrangements for maintaining cash.**

Under the National Bank Ordinance:

- CCPs are required to identify, measure, manage and monitor their investment and custody risk.³²⁶

CCPs are required to take measures to minimise custody risk, in particular by holding assets with creditworthy and – if possible – supervised entities.³²⁷

If a CCP places its own assets or assets posted to it by clearing members in the custody of a third party, the CCP is required to minimise the associated risks. In particular, the CCP must place the assets with creditworthy and – if possible – supervised financial institutions, and take measures to ensure that the CCP can access the collateral and assets immediately.³²⁸

The assets posted to a CCP by clearing members are required to be segregated from the assets of the CCP or those of other members.³²⁹

- **Concentration limits.**

Under the National Bank Ordinance:

- CCPs are required to identify, measure, manage and monitor investment and custody risk.³³⁰

CCPs are required to avoid collateral concentration and to apply haircuts considering extreme but plau-

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. However, if a CCP places its own assets or assets posted to it by clearing members in the custody of a third party, the CCP is required to minimise the associated risks. In particular, the CCP must place the assets with creditworthy and – if possible – supervised financial institutions, and take measures to ensure that the CCP can access the collateral and assets immediately which are the underlying minimum criteria to be met under EMIR where a CCP is not able to deposit assets with the operator of a securities settlement system. The Swiss 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. However, if a CCP places its own assets or assets posted to it by clearing members in the custody of a third party, the CCP is required to minimise the associated risks. In particular, the CCP must place the assets with creditworthy and – if possible – supervised financial institutions, and take measures to ensure that the CCP can access the collateral and assets immediately which are the underlying minimum criteria to be met under EMIR where a CCP is not able to deposit assets with the operator of a securities settlement system.

<p>required.³¹⁸</p> <ul style="list-style-type: none"> 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.³¹⁹ 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.³²⁰ 	<p>sible market conditions.³³¹</p> <p>CCPs are required to avoid risk concentrations.³³²</p>	<p>CCPs in Switzerland are not explicitly required to deposit cash with central banks or to collateralise 95% of the cash maintained with commercial banks. However, if a CCP places its own assets or assets posted to it by clearing members in the custody of a third party, the CCP is required to minimise the associated risks. In particular, the CCP must ensure that the CCP can access the collateral and assets immediately which are the underlying objectives to be met under EMIR where a CCP deposits cash other than with a central bank. It is therefore expected that in order to satisfy these requirements Swiss CCPs will need to collateralise a high proportion of their cash deposits with highly liquid financial instruments with minimum market and credit risks.</p> <p>No restriction comparable to the one in the EU regime has been found with respect to the investment in derivatives. However a Swiss CCP is restricted to investing in only those financial instruments with low credit and market risk which are the underlying minimum criteria under EMIR.</p> <p>On balance, these differences do not undermine the consistency of the objectives of the Swiss and EMIR regimes.</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.³³³</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.³³⁴</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.³³⁵</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.³³⁶</p> <p>Where a CCP keeps records and accounts for a Clearing Member on an:</p> <ul style="list-style-type: none"> • 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 	<p>Default procedures</p> <p><i>Under the National Bank Ordinance:</i></p> <ul style="list-style-type: none"> • CCPs are required to have adequate rules and procedures to manage a clearing member default and to minimise credit and liquidity risk for the CCP (and its clearing members).³⁴⁰ • CCPs are required to have effective and enforceable rules which are evaluated regularly, including the netting, liquidation and portability arrangements.³⁴¹ • CCPs are required to have rules and procedures which specify in particular: (i) the order in which available funds are to be used, (ii) how losses for which available funds are not sufficient are allocated, (iii) how to address liquidity shortfalls, and (iv) how to replenish funds after managing the default.³⁴² • CCPs are required to test their rules and procedures at least annually .³⁴³ • CCPs are required to have rules and procedures to support the transfer of collateral and positions to another client.³⁴⁴ • A CCP must inform the SNB and FINMA and other responsible supervisory authorities immediately of any suspension or exclusion of a clearing member.³⁴⁵ 	<p>Default procedures</p> <p><i>The Swiss regime for CCPs includes default procedure requirements which are applicable, at a jurisdictional level, to CCPs in Switzerland, and which are broadly equivalent to those in EMIR.</i></p> <p>A Swiss CCP is not expressly required to inform the Swiss authorities when it considers that a clearing member will not be able to meet its future obligations; however a CCP is required to inform the Swiss authorities immediately of any suspension or exclusion of a clearing member.</p> <p>On balance, this difference does not undermine the consistency of the objectives of the Swiss and EMIR regimes.</p>
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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.³³⁷

- **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, including liquidating the assets and positions held by the Defaulting Clearing Member for the Client. ³³⁸

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).³³⁹

<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 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. ³⁴⁶ • 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. ³⁴⁷ • 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. ³⁴⁸ Sensitivity analysis must be performed on a number 	<p>Review of models, stress testing and back testing</p> <ul style="list-style-type: none"> • Model validation and testing programmes. <i>Under the National Bank Ordinance:</i> • CCPs are required to have regular independent validation of their risk management (by an internal or external audit function). The SNB may specify the scope and depth of such audits. ³⁵⁶ • Back testing. <i>Under the National Bank Ordinance:</i> • CCPs are required to undertake daily back-testing of their margins. ³⁵⁷ • Sensitivity testing and analysis. <i>Under the National Bank Ordinance:</i> • CCPs are required to undertake monthly sensitivity analysis of their margin calculation model (assumptions and parameters). ³⁵⁸ • Stress testing. <i>Under the National Bank Ordinance:</i> • CCPs are required to undertake daily stress testing of their margins and default fund. ³⁵⁹ • Review of models using test results. <i>Under the National Bank Ordinance:</i> • CCPs are required to undertake a monthly review of their scenarios, models, assumptions and the parameters of their stress tests. ³⁶⁰ <p>CCPs are required to undertake regular validation of the</p>	<p>Review of models, stress testing and back testing</p> <p><i>The Swiss regime for CCPs includes review of models, stress testing and back testing requirements which are applicable, at a jurisdictional level, to CCPs in Switzerland, and which are broadly equivalent comparable to those of EMIR.</i></p> <p>A Swiss CCP is not specifically required to submit material revisions or adjustments of its models and parameters to its risk committee, or to submit the results of back testing to its risk committee or clearing members. However, the <i>Explanatory Report on the revised NBO</i> references the EMIR RTS for interpretation purposes which indirectly incorporates this EMIR requirement.</p> <p>A Swiss 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 modelling extreme market conditions beyond what is considered plausible. However, CCPs are required to undertake at least annually a comprehensive review of their credit risk management model including the calculation methodology and the procedures for calling for and managing margins and default fund contributions and</p>
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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 are sufficient³⁴⁹.
- **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 imposes³⁵⁰.
- **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 them³⁵¹.
- **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.³⁵²
- **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.³⁵³
- **Frequency.** A CCP must conduct a comprehensive validation of its models and their methodologies, its liquidity risk management framework, valuation models, correlation performance in relation to portfolio margining and testing pro-

haircuts on their collateral, catering for extreme but plausible market conditions.³⁶¹

CCPs are required to undertake at least annually a comprehensive review of their credit risk management model including the calculation methodology and the procedures for calling for and managing margins and default fund contributions.³⁶²

If the tests and reviews listed above reveal shortcomings, the CCP is required to adapt its arrangements in order to fulfil the requirements.³⁶³

The results of risk model tests (incl. backtesting und stresstesting) are required to be submitted to the SNB.³⁶⁴

Further, a CCP must inform the SNB in good time about any significant planned changes with regard to (among others) its risk management, in particular its procedures and tools for managing credit and liquidity risks.³⁶⁵

- **Reverse stress tests.** No corresponding provisions.
- **Testing default procedures.**

Under the National Bank Ordinance:

- CCPs are required to undertake regular (at least annual) testing of their default procedures.³⁶⁶
- **Frequency.** Frequency is specified for each requirement concerning the review of models, stress testing and back testing.
- **Information to be publicly disclosed.**

Under the National Bank Ordinance:

- CCPs are required to publicly disclose their risk management models and the results of their stress tests pursuant to the CPSS-IOSCO Disclosure Framework³⁶⁷. The

reverse stress-testing can be requested by the SNB as part of the mandated review of the CCP's scenarios, models, assumptions, parameters, and calculation methodology.

A Swiss CCP is required to test its collateral haircut policies regularly, but is not specifically required to do so at least monthly. However, the *Explanatory Report on the revised NBO* references the EMIR RTS for interpretation purposes which indirectly incorporates this EMIR requirement.



<p>grammes 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.³⁵⁴</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) mechanisms to help address the Defaulting Clearing Member’s obligations to its Clients.³⁵⁵ 	<p>CPSS-IOSCO Disclosure Framework incorporates public disclosure of the general principles underlying the CCP’s 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>	
<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.³⁶⁸ • 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 re- 	<p>Settlement</p> <p><i>Under the Banking Act:</i></p> <ul style="list-style-type: none"> • The order of a person who participates in a payment and securities settlement system and against such recovery and insolvency measures have been arranged, is legally binding and effective against third parties if: <ul style="list-style-type: none"> a) it was entered into the system prior to arrangement 	<p>Settlement</p> <p><i>The Swiss regime for CCPs includes settlement requirements which are applicable, at a jurisdictional level, to CCPs in Switzerland, and which are broadly equivalent to those of EMIR.</i></p>

<p>ceive 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.³⁶⁹</p> <ul style="list-style-type: none"> • Settlement finality rules also apply in accordance with the Settlement Finality Directive³⁷⁰. 	<p>of measures and according to the rules of the system has become irrevocable; or</p> <p>b) it was executed on the business day defined according to the rules of the system, in the course of which the measure was arranged, if the CCP can prove that it was not aware, and should not have been aware, of the arrangement of such measures.³⁷¹</p> <ul style="list-style-type: none"> • These provisions apply where: <ul style="list-style-type: none"> a) the system operator is supervised or monitored in Switzerland, or b) the participation contract is subject to Swiss law.³⁷² • The legal validity of netting agreements or understandings concluded in advance, concerning the liquidation on the free market of collateral in the form of securities or other financial instruments traded on a representative market, shall remain unaffected by recovery and insolvency measures.³⁷³ <p><i>Under the FISA:</i></p> <ul style="list-style-type: none"> • An instruction issued by a custodian which is a clearing member of a CCP shall be legally binding and effective against third parties even in the event of debt enforcement proceedings against that custodian, provided that: <ul style="list-style-type: none"> a) the instruction was entered into the system before the commencement of such proceedings; or b) it was entered into the system after the commencement of such proceedings and carried out on the day of commencement, if the CCP can prove that it was not aware, and should not have been aware, of the commencement of such proceedings. ³⁷⁴ <p><i>Under the National Bank Ordinance, CCPs are required to:</i></p>	
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	<ul style="list-style-type: none">• Settle in central bank money if possible and practical, otherwise use of settlement arrangements with little or no credit and liquidity risk. Remaining risks must be subject to on-going monitoring.³⁷⁵• Use Delivery-versus-Payment (or Payment-versus-Payment) if settlement involves two reciprocal obligations.³⁷⁶• Determine the point in time when transactions are settled with finality in the CCPs rules and regulations.³⁷⁷• Rules to specify obligations with regard to physical deliveries.³⁷⁸	
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- ¹ FINMASA Art. 37
- ² EMIR, Art. 26(1) and Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 3 and 4.
- ³ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 3(1) and (2).
- ⁴ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 3(1) and (2).
- ⁵ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 3(7).
- ⁶ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 3(5).
- ⁷ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 3(3).
- ⁸ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Recital 12 and Art. 3(4).
- ⁹ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 4(1).
- ¹⁰ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 4(2).
- ¹¹ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 4(4).
- ¹² Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 4(5).
- ¹³ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 4(6).
- ¹⁴ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 4(7).
- ¹⁵ EMIR, Art. 26(2) and Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 5(1).
- ¹⁶ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 5.
- ¹⁷ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 7(1).
- ¹⁸ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 7(2).
- ¹⁹ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 7(3).
- ²⁰ EMIR, Art. 26(4).
- ²¹ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 7(6).
- ²² EMIR, Art. 26(5).
- ²³ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 8(1) to (3).
- ²⁴ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 8(4).
- ²⁵ EMIR, Art. 26(6).
- ²⁶ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 8.
- ²⁷ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 8.
- ²⁸ EMIR, Art. 26(7); Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 10.
- ²⁹ EMIR, Art. 26(8).
- ³⁰ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 11(1) to (4).
- ³¹ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 11(5).
- ³² BA Art. 3(2)(a).
- ³³ FINMA Circular 08/24, margin numbers 9-16.
- ³⁴ FINMA Circular 08/24, margin numbers 17-31.
- ³⁵ FINMA Circular 08/24, margin numbers 32-53.
- ³⁶ FINMA Circular 08/24, margin numbers 54-79.
- ³⁷ FINMA Circular 08/24, margin numbers 100-112.
- ³⁸ FINMA Circular 08/24, margin numbers 113-126.
- ³⁹ BA Art. 3(2)(a).
- ⁴⁰ BO Art. 9(2).
- ⁴¹ FINMA Circular 08/24, margin numbers 100-112.
- ⁴² FINMA Circular 08/24, margin numbers 113-126.
- ⁴³ NBO Art. 27(1), Art. 22(1)(b).
- ⁴⁴ NBO Art. 27(2).
- ⁴⁵ NBO Art. 27(3).
- ⁴⁶ FINMA Circular 08/24, margin numbers 100-112.
- ⁴⁷ FINMA Circular 08/24, margin numbers 113-126.
- ⁴⁸ NBO Art. 22(1c).
- ⁴⁹ NBO Art. 22(2).
- ⁵⁰ NBO Art. 22(3).
- ⁵¹ NBO Art. 36(2).
- ⁵² BA Art. 3(2)(a).
- ⁵³ FINMA Circular 08/24, margin numbers 9-16.
- ⁵⁴ FINMA Circular 08/24, margin numbers 17-31.
- ⁵⁵ FINMA Circular 08/24, margin numbers 80-85.
- ⁵⁶ FINMA Circular 08/24, margin number 86.
- ⁵⁷ FINMA Circular 08/24, margin number 60.
- ⁵⁸ FINMA Circular 08/24, margin number 100.
- ⁵⁹ FINMA Circular 08/24, margin number 102.
- ⁶⁰ FINMA Circular 08/24, margin number 113.
- ⁶¹ FINMA Circular 08/24, margin number 115.
- ⁶² FINMA Circular 08/24, margin number 125.
- ⁶³ NBO Art. 22(1)(c).
- ⁶⁴ NBO Art. 22(1)(a).
- ⁶⁵ NBO Art. 22(a)(1).
- ⁶⁶ NBO Art. 22(a)(3).

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- ⁶⁷ FINMA Circular 08/24, margin numbers 113-126.
⁶⁸ NBO Art. 32.
⁶⁹ NBO Art. 32(a).
⁷⁰ NBO Art. 32(b).
⁷¹ NBO Art. 32(c).
⁷² NBO Art. 23(a)(1).
⁷³ BA Art. 9/4.
⁷⁴ FINMA Circular 08/24, margin numbers 113-126.
⁷⁵ NBO Art. 22(1)(a).
⁷⁶ NBO Art. 22(a)(4).
⁷⁷ BA Art. 3(b)-3(g).
⁷⁸ EMIR, Art. 27(1).
⁷⁹ EMIR, Art. 27(2).
⁸⁰ EMIR, Art. 2(28).
⁸¹ EMIR, Art. 27(2).
⁸² EMIR, Art. 27(3).
⁸³ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 4(3).
⁸⁴ BA Art. 3(2)(c) and BO Art. 6(1) and 6(1)(a).
⁸⁵ BO Art. 8.
⁸⁶ FINMA Circular 08/24, margin numbers 9-16.
⁸⁷ FINMA Circular 08/24, margin number 19.
⁸⁸ FINMA Circular 08/24, margin numbers 20-24.
⁸⁹ FINMA Circular 08/24, margin number 28.
⁹⁰ FINMA Circular 08/24, margin numbers 32-53.
⁹¹ FINMA Circular 08/24, margin number 38.
⁹² FINMA Circular 08/24, margin numbers 88-99.
⁹³ FINMA Circular 08/24, margin number 86.
⁹⁴ FINMA Circular 08/24, margin numbers 113-126.
⁹⁵ NBO Art. 22(1).
⁹⁶ NBO Art. 22(a)(1).
⁹⁷ NBO Art. 22(a)(2).
⁹⁸ NBO Art. 22(a)(3).
⁹⁹ NBO Art. 36(d)(1)(1).
¹⁰⁰ NBO Art. 23(a)(1).
¹⁰¹ NBO Art. NBO Art. 23(a)(1)(a-i) and Art. 23(a)(2).
¹⁰² NBO Art. 23a (1f).
¹⁰³ FINMA Circular 08/24, margin numbers 113-126.
¹⁰⁴ EMIR, Art. 28(1).
¹⁰⁵ EMIR, Art. 28(2).
¹⁰⁶ EMIR, Art. 28(3).
¹⁰⁷ NBO Art.22(3).
¹⁰⁸ EMIR, Art. 29(1).
¹⁰⁹ EMIR, Art. 29(2).
¹¹⁰ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 12.
¹¹¹ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Recital 16.
¹¹² Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 13.
¹¹³ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 14.
¹¹⁴ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 15.
¹¹⁵ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 16.
¹¹⁶ NBO Art.22(b)(1).
¹¹⁷ NBO Art.22(b)(2).
¹¹⁸ NBO Art.22(b)(2).
¹¹⁹ NBO Art.22(b)(2).
¹²⁰ NBO Art.22(b)(1).
¹²¹ NBO Art.22(b)(2).
¹²² 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).
¹²³ EMIR, Art. 30(1).
¹²⁴ EMIR, Art. 30(2).
¹²⁵ EMIR, Art. 30(4).
¹²⁶ EMIR, Art. 30(3).
¹²⁷ EMIR, Art. 30(5).
¹²⁸ BA Art. 3(2)(cbis) and BO Art. 6.
¹²⁹ EMIR, Art. 31(1).
¹³⁰ EMIR, Art. 31(1).
¹³¹ 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).
¹³² EMIR, Art. 31(2).

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- ¹³³ EMIR, Art. 31(3).
¹³⁴ EMIR, Art. 31(5) and (6).
¹³⁵ BA Art. 3(5).
¹³⁶ BA Art. 3(c).
¹³⁷ BA Art. 3(6) and BO Art. 6(a).
¹³⁸ FINMASA Art. 29.
¹³⁹ NBO Art. 36(1)(d) and Art. 36(2)(a).
¹⁴⁰ EMIR, Art. 32(1).
¹⁴¹ EMIR, Art. 32(2).
¹⁴² EMIR, Art. 32(3).
¹⁴³ EMIR, Art. 32(4).
¹⁴⁴ EMIR, Art. 32(6), (7).
¹⁴⁵ BA Art. 3(2)(cbis) and BO Art. 6.
¹⁴⁶ 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).
¹⁴⁷ EMIR, Art. 33(1).
¹⁴⁸ EMIR, Art. 33(2).
¹⁴⁹ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Recital 13.
¹⁵⁰ BO Art. 8(2).
¹⁵¹ FINMA Circular 08/24, margin number 17.
¹⁵² FINMA Circular 08/24, margin number 14.
¹⁵³ FINMA Circular 08/24, margin number 18.
¹⁵⁴ FINMA Circular 08/24, margin number 86.
¹⁵⁵ FINMA Circular 08/24, margin numbers 113-126.
¹⁵⁶ FINMA Circular 08/24, margin numbers 20-24.
¹⁵⁷ NBO Art. 32(a) and in particular Art. 32(a)(3)(e).
¹⁵⁸ EMIR, Art. 26(3).
¹⁵⁹ EMIR, Art. 34 (1) and (2).
¹⁶⁰ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 17.
¹⁶¹ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 18.
¹⁶² Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 19.
¹⁶³ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 20.
¹⁶⁴ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 21.
¹⁶⁵ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 22.
¹⁶⁶ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 23.
¹⁶⁷ BA Art. 9(2).
¹⁶⁸ FINMA Circular 08/24, margin number 8 of Appendix 1.
¹⁶⁹ NBO Art. 32(b)(1) and (2).
¹⁷⁰ NBO Art. 32(b) and 32(2)-(4).
¹⁷¹ NBO Art. 22(a)(3).
¹⁷² NBO Art. 32.
¹⁷³ NBO Art. 32(b)(2).
¹⁷⁴ NBO Art. 32(b)(3).
¹⁷⁵ NBO Art. 32(c)(1) and (2).
¹⁷⁶ NBO Art. 32(b)(5).
¹⁷⁷ NBO Art. 32(a)(2) and (3).
¹⁷⁸ NBO Art. 32(b)(5).
¹⁷⁹ NBO Art. 26.
¹⁸⁰ NBO Art. 32.
¹⁸¹ NBO Art. 36(3).
¹⁸² NBO Art. 26.
¹⁸³ NBO Art. 32(b).
¹⁸⁴ EMIR, Art. 35(1).
¹⁸⁵ EMIR, Art. 35(2).
¹⁸⁶ FINMA Circular 08/24, margin numbers 26-27.
¹⁸⁷ FINMA Circular 08/24, margin number 16.
¹⁸⁸ NBO Art. 32(d)(1).
¹⁸⁹ NBO Art. 32(d)(2).
¹⁹⁰ NBO Art. 32(d)(3).
¹⁹¹ NBO Art. 32(d)(4)(a).
¹⁹² NBO Art. 32(d)(4)(b).
¹⁹³ NBO Art. 36(2)(h).
¹⁹⁴ EMIR, Art. 36(1).
¹⁹⁵ EMIR, Art. 36(1) and (2).
¹⁹⁶ NBO Art. 22(2).
¹⁹⁷ NBO Art. 22(3).
¹⁹⁸ EMIR, Art. 37(1).

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- ¹⁹⁹ EMIR, Art. 37(3).
²⁰⁰ EMIR, Art. 37(4) and (5).
²⁰¹ EMIR, Art. 37(6).
²⁰² EMIR, Art. 37(2).
²⁰³ NBO Art. 24(1).
²⁰⁴ NBO Art. 24(2).
²⁰⁵ NBO Art. 24(3).
²⁰⁶ NBO Art. 24(4-5).
²⁰⁷ NBO Art. 24 (6).
²⁰⁸ NBO Art. 36(3)(c).
²⁰⁹ NBO Art. 23.
²¹⁰ NBO Art. 33.
²¹¹ EMIR, Art. 38(1).
²¹² EMIR, Art. 38(3) to (5).
²¹³ EMIR, Art. 38(1).
²¹⁴ EMIR, Art. 38(2).
²¹⁵ EMIR, Art. 38(1) and (3).
²¹⁶ NBO Art. 24(6).
²¹⁷ NBO Art. 27(3).
²¹⁸ NBO Art. NBO Art. 23(a)(1)(a-i) and Art. 23(a)(2).
²¹⁹ NBO Art. 36(1)(a).
²²⁰ EMIR, Art. 39(1) to (3).
²²¹ EMIR, Art. 39(4) to (6).
²²² EMIR, Art. 39(7).
²²³ EMIR, Art. 39(8).
²²⁴ EMIR, Art. 39(9).
²²⁵ EMIR, Art. 39(10).
²²⁶ NBO Art. 24b(1).
²²⁷ NBO Art. 24(b)(2).
²²⁸ NBO Art. 24b(3).
²²⁹ NBO Art. 23a (1f).
²³⁰ NBO Art. 30 (3).
²³¹ EMIR, Art. 40(1).
²³² NBO Arts. 28 and 28(b).
²³³ NBO Arts. 28 and 28(b).
²³⁴ NBO Arts. 28 and 28(b).
²³⁵ NBO Arts. 28 and 28(b).
²³⁶ EMIR, Art. 41(1).
²³⁷ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Recital 21.
²³⁸ EMIR, Art. 41(1).
²³⁹ EMIR, Art. 41(2).
²⁴⁰ EMIR, Art. 41(3) and (4).
²⁴¹ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 24(1).
²⁴² Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 24(1).
²⁴³ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 24(2).
²⁴⁴ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 24(4).
²⁴⁵ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 25.
²⁴⁶ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 26(1).
²⁴⁷ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 26(4).
²⁴⁸ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 27.
²⁴⁹ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 28.
²⁵⁰ NBO Arts. 28 ,28(b) and 28(c).
²⁵¹ NBO Arts. 28, 28(b) and 28(c).
²⁵² NBO Arts. 28, 28(b) and 28(c).
²⁵³ NBO Arts. 28, 28(b) and 28(c).
²⁵⁴ NBO revised Art. 27(2) and Arts. 28, 28(b) and 28(c).
²⁵⁵ NBO Art. 37(2).
²⁵⁶ EMIR, Art. 42(1) and (2).
²⁵⁷ EMIR, Art. 42(3).
²⁵⁸ EMIR, Art. 42(4).
²⁵⁹ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 29.
²⁶⁰ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 30.
²⁶¹ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 31.
²⁶² NBO Art. 28(b)(3).
²⁶³ NBO Art. 22(a)(3).
²⁶⁴ NBO Art. 2(1s).
²⁶⁵ NBO Art. 28d(1d).
²⁶⁶ NBO Art. 28(d)(1e).

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- ²⁶⁷ NBO Art. 37(2).
²⁶⁸ EMIR, Art. 43.
²⁶⁹ EMIR, Art. 43(3).
²⁷⁰ NBO Art. 28(b)(3).
²⁷¹ EMIR, Art. 44(1).
²⁷² EMIR, Art. 44 (1).
²⁷³ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 32.
²⁷⁴ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 33.
²⁷⁵ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 34.
²⁷⁶ BA Art. 4(1).
²⁷⁷ LO Art. 2(1).
²⁷⁸ LO Art. 5.
²⁷⁹ LO Art. 6(1).
²⁸⁰ LO Art. 6(2).
²⁸¹ LO Art. 6(3).
²⁸² LO Art. 7(1).
²⁸³ LO Art. 7(2).
²⁸⁴ LO Art. 7(3).
²⁸⁵ FINMA Circular 13/6.
²⁸⁶ NBO Art. 29(1).
²⁸⁷ NBO Art. 29(2).
²⁸⁸ NBO Art. 29(3).
²⁸⁹ LO Art. 7(4).
²⁹⁰ LO Art. 8.
²⁹¹ LO Art. 9.
²⁹² LO Art. 10.
²⁹³ NBO Art. 29(2) and (6).
²⁹⁴ NBO Art. 29(4).
²⁹⁵ NBO Art. 29(5) and (6).
²⁹⁶ NBO Art. 27(2).
²⁹⁷ EMIR, Art. 45(1) to (4).
²⁹⁸ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 35.
²⁹⁹ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 36.
³⁰⁰ NBO Art. 28(b)(4).
³⁰¹ NBO Art. 36(3)(c).
³⁰² EMIR, Art. 46(1).
³⁰³ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 37 and 42.
³⁰⁴ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 38.
³⁰⁵ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 39 to 41.
³⁰⁶ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 43.
³⁰⁷ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 44.
³⁰⁸ NBO Art. 28a(1).
³⁰⁹ NBO Art. 28a(4).
³¹⁰ NBO Art. 28(b)(2).
³¹¹ NBO Art. 28(1).
³¹² NBO Art. 28(a)(2).
³¹³ NBO Art. 28(a)(3).
³¹⁴ EMIR, Art. 47(6).
³¹⁵ EMIR, Art. 47(1); Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 45.
³¹⁶ EMIR, Art. 47(3); Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 46.
³¹⁷ EMIR, Art. 47(4); Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 47.
³¹⁸ EMIR, Art. 47(5).
³¹⁹ 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.
³²⁰ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art 48.
³²¹ NBO Art. 30(3).
³²² NBO Art. 30(1).
³²³ NBO Art. 30(2).
³²⁴ NBO Art. 24b(1).
³²⁵ NBO Art. 30(2).
³²⁶ NBO Art. 30(1).
³²⁷ NBO Art. 30(2).
³²⁸ NBO Art. 30(2).
³²⁹ NBO Art. 24b(1).
³³⁰ NBO Art. 30(1).
³³¹ NBO Art. 28a(2) and (3).
³³² NBO Art. 30(3).

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- 333 EMIR, Art. 48(1).
334 EMIR, Art. 48(2).
335 EMIR, Art. 48(3).
336 EMIR, Art. 48(4).
337 EMIR, Art. 48(5).
338 EMIR, Art. 48(6).
339 EMIR, Art. 48(7).
340 NBO Art. 24(a)(1) and NBO Art. 23(1).
341 NBO Art. 23(2).
342 NBO Art. 24(a)(2).
343 NBO Art. 24(a)(3).
344 NBO Art. 24(a)(3).
345 NBO Art. 36(4).
346 EMIR, Art. 49(1); Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 50 and 51.
347 Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 52.
348 Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 53.
349 Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 56 and 57.
350 Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 58.
351 Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 59.
352 Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 60.
353 EMIR, Art. 49(2); Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 61.
354 Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 62.
355 EMIR, Art. 49(3); Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 64.
356 NBO Art. 37(3).
357 NBO Art. 28d(1a).
358 NBO Art. 28d(1c).
359 NBO Art. 28d(1b).
360 NBO Art. 28d(1d).
361 NBO Art. 28a(2).
362 NBO Art. 28d(1e).
363 NBO Art. 28d(2).
364 NBO Art. 36(ii).
365 NBO Art. 36(2f).
366 NBO Art. 24a(3).
367 NBO Art. 23a(2).
368 EMIR, Art. 50(1).
369 EMIR, Art. 50(2) and (3).
370 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.
371 BA Art. 27(2).
372 BA Art. 27(2^{bis}).
373 BA Art. 27(3).
374 FISA Art. 20.
375 NBO Art. 25.
376 NBO Art. 25(b).
377 NBO Art. 25(a)(1).
378 NBO Art. 23(1).