



European Securities and
Markets Authority

Supplement to the Final report

Technical advice on third country regulatory equivalence under EMIR – Japan



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Key to the references and terms used in this technical advice

CDA: Commodity Derivatives Act (Act No. 239 of 1950, as amended)

Commodities CCPs: CCPs which clear commodities derivatives transactions and OTC commodities derivatives transactions

FIEA: Financial Instruments and Exchange Act of Japan (Act No. 25 of 1948, as amended)

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

JFSA: Japan Financial Services Agency

MAFF: Japanese Ministry of Agriculture, Forestry and Fisheries

METI: Japanese Ministry of Economy, Trade and Industry

NCA: National Competent Authority from the European Union

RTS: Regulatory Technical Standards

Section I.

Executive summary

1. The European Commission mandated ESMA on 11 October 2012 to provide it with technical advice on the equivalence between the Japanese regulatory regime and different aspects of the EU regulatory regime under Regulation (EC) No. 648/2012 of the European Parliament and the Council on OTC derivatives, central counterparties (CCPs) and trade repositories (TRs)¹. The mandate was subsequently reviewed to postpone the deadline to provide the advice and to change its scope in relation to certain jurisdictions.
 2. These specific areas concern: 1) the recognition of third country CCPs; and 2) the identification of potentially duplicative or conflicting requirements regarding the clearing obligation, reporting obligation, non-financial counterparties and risk-mitigation techniques for OTC derivative contracts not cleared by a CCP. On 13 June 2013 the European Commission mandated ESMA to provide it with technical advice on the equivalence between the Japanese regulatory regime on a third aspect of the EU regulatory regime under EMIR, namely the recognition of third country TRs.
 3. ESMA's advice to the European Commission in respect of the equivalence between the Japanese regulatory regime and the EU regulatory regime under EMIR in respect of the recognition of third country CCPs, and 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 was included in the Final report (ESMA/2013/1158 of 1 September 2013). In respect of ESMA's technical advice regarding the Japanese regime for TRs, the Japanese Financial Services Agency has informed ESMA that no trade repositories established in Japan intend to apply for recognition under EMIR. Despite the fact that ESMA had a mandate to provide the Commission with technical advice on the equivalence of the legal and supervisory framework of Japan for TRs, ESMA advised the European Commission in September (ESMA/2013/1163 of 2 September 2013) that ESMA considered that it would not be appropriate to issue a technical advice when there was no current need for such an advice. ESMA considered that it would be more advantageous to postpone the delivery of its technical advice regarding TRs for Japan until such time as a TR from Japan actually intends to apply for recognition under EMIR.
 4. **This supplement to the September Final report relates to the recognition of third country CCPs and sets out ESMA's advice to the European Commission in respect of the equivalence between the Japanese regulatory regime for commodity CCPs and the EU regulatory regime under EMIR in respect of the recognition of third country CCPs.**
 5. 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.
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¹ Hereafter the Regulation or EMIR.

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

1. The European Commission mandated ESMA on 11 October 2012 to provide it with technical advice on the equivalence between the Japanese regulatory regime and two specific aspects of the EU regulatory regime under EMIR. On 27 February 2013, the Commission amended the original mandate to postpone the deadlines for the delivery of the technical advice by ESMA. For Japan the original deadline of 15 March 2013 was changed to 15 June 2013. On 13 June 2012, the European Commission further amended the mandate to postpone the deadlines for the delivery of technical advice by ESMA and to change its scope in respect of certain jurisdictions. For Japan the revised deadline of 15 June 2013 was changed to 1 September 2013. The European Commission also extended the scope of the mandate to request that ESMA provide it with technical advice on the equivalence between the Japanese regulatory regime and the EU regulatory regime under EMIR regarding the recognition of third country TRs (see Annex I and II).
2. The mandate on equivalence for Japan therefore covers three specific areas: 1) the recognition of third country CCPs; 2) the recognition of third country TRs; and 3) the identification of potentially duplicative or conflicting requirements regarding the clearing obligation, reporting obligation, non-financial counterparties and risk-mitigation techniques for OTC derivative contracts not cleared by a CCP.
3. ESMA's advice to the European Commission in respect of the equivalence between the Japanese regulatory regime and the EU regulatory regime under EMIR in respect of the recognition of third country CCPs, and 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 was included in the Final report (ESMA/2013/1158 of 1 September 2013). In respect of ESMA's technical advice regarding the Japanese regime for TRs, the Japanese Financial Services Agency has informed ESMA that no trade repositories established in Japan intend to apply for recognition under EMIR. Despite the fact that ESMA had a mandate to provide the Commission with technical advice on the equivalence of the legal and supervisory framework of Japan for TRs, ESMA advised the European Commission in September (ESMA/2013/1163 of 2 September 2013) that ESMA considered that it would not be appropriate to issue a technical advice when there was no current need for such an advice. ESMA considered that it would be more advantageous to postpone the delivery of its technical advice regarding TRs for Japan until such time as a TR from Japan actually intends to apply for recognition under EMIR.
4. Subsequent to ESMA providing its advice to the European Commission in respect of the equivalence between the Japanese regulatory regime and the EU regulatory regime under EMIR in respect of the recognition of third country CCPs, ESMA has become aware that there is a separate regulatory regime in Japan for CCPs which clear commodities derivatives transactions and OTC commodities derivatives transactions (Commodities CCPs). This regulatory regime is governed by the Commodity Derivatives Act (CDA) and such CCPs are subject to supervision by the Ministry of Agriculture, Forestry and Fisheries (MAFF) and the Ministry of Economy, Trade and Industry (METI). This regulatory regime is separate to that which was assessed by ESMA as part of its advice to the European Commission in September regarding of the equivalence between the Japanese regulatory regime and the EU regulatory regime under EMIR in respect of the recognition of third country CCPs. In its September advice, ESMA advised only in respect of the regulatory regime in Japan for CCPs which clear derivatives transactions conducted on Financial Instruments Exchanges and OTC derivatives transactions, in each case relating to securities, currencies, interest rates, credit, weather, GDP and other indices. The regulatory regime covered by the ESMA's September advice is governed by the Financial Instruments and Exchange Act (FIEA) and such CCPs are subject to supervision by the Japanese Financial Services Agency (JFSA).

5. **This supplement to the September Final report relates to the recognition of third country CCPs and sets out ESMA's advice to the European Commission in respect of the equivalence between the Japanese regulatory regime for Commodities CCPs and the EU regulatory regime under EMIR in respect of the recognition of third country CCPs.**
6. ESMA has liaised with its counterparts in Japan (MAFF and METI) 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

7. 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

8. 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.
9. The European Commission has requested ESMA's technical advice in respect of Japan to prepare possible implementing acts under Article 25(6) of EMIR. **This report contains ESMA's advice in respect of Japan under Article 25(6) of EMIR.**

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

10. 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 Article 25 of EMIR are met, can a third country CCP be granted recognition².

ESMA's Approach to assessing equivalence

11. 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).

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

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

Section II. Technical advice on CCPs

Part I – Effective on-going supervision and enforcement

13. The current Japanese financial supervisory structure was established, from an institutional point of view, in the late 90s but has, in an international comparison, a very significant track record.
14. Responsibility for the prudential and conduct regulation of deposit-takers, insurers and market participants and for the regulation of derivatives transactions conducted on Financial Instruments Exchanges and OTC derivatives transactions, in each case relating to securities, currencies, interest rates, credit, weather, GDP and other indices, rests with the Japan Financial Services Agency (JFSA). Responsibility for the regulation of derivatives transactions relating to commodities rests with MAFF and METI).
15. Commodities CCPs in Japan are required to be licensed¹. The CDA specifies that to grant a licence in order to conduct commodities clearing services, the relevant Minister (i.e. the Minister of MAFF or METI, as the case may be) must be satisfied, among other things, that the CCP has provisions of its articles of incorporation and business rules which conform to the applicable domestic laws and regulations and which are sufficient to conduct clearing appropriately and with certainty, that the financial standing of the applicant is sufficient for soundly conducting clearing and that the expected income and expenditures pertaining to the business of the CCP are favourable, and that the CCP has sufficient knowledge and experience for conducting clearing appropriately and with certainty.
16. There is currently one Commodities CCP operating in Japan.

MAFF and METI

17. MAFF and METI are Ministries of the Japanese government which are responsible for the supervision of derivatives transactions relating to commodities including CCPs clearing derivatives transactions relating to commodities.
18. MAFF and METI are responsible for:
 - approving applications for a Commodities CCP licence and proposed changes to the Business Rules of a Commodities CCP;
 - inspecting the business, books and records of a Commodities CCP, ordering the production of reports and assessing a Commodities CCP's compliance with their obligations;
 - making orders to improve aspects of the business of a Commodities CCP and the enforcement of such orders;
 - revoking the license of a Commodities CCP or suspending the business of a Commodities CCP and the enforcement of such orders.
19. MAFF and METI conduct onsite inspections and off-site monitoring. Within MAFF supervision is undertaken by the Commodity Trade Division. Within METI supervision is undertaken by the Market Surveillance Team of the Commerce and Consumer Affairs Policy Division.
20. The supervision conducted by MAFF and METI is divided into three phases: (i) monitoring, (ii) assessment and (iii) inducing changes.

Monitoring

21. Monitoring is conducted using the following three methods:

22. Continuous meetings between JCCH and MAFF and METI. MAFF and METI hold monthly meetings with JCCH. At these meetings JCCH reports the decisions taken by its board and any relevant aspects of JCCH's operations of the previous month. These meetings provide an opportunity to discuss various issues.
23. Publicly-available documents issued by JCCH. MAFF and METI review documentation which is published by JCCH.
24. Additional information requests by MAFF and METI. MAFF and METI have the ability to request that JCCH provide information².

Assessment

25. Based on the information ascertained under its monitoring activities, the Commodity Trade Division of MAFF and the Market Surveillance Team of METI analyse the risks undertaken by JCCH and its arrangements for controlling such risks and seek to identify where any improvements could be made.

Inducing changes

26. When MAFF and METI identify any issues requiring improvement, whether that is in the CCP's design, risk management or operations, they seek to have JCCH and/or its clearing members make the necessary changes to address these issues. Where necessary MAFF and METI have powers of direction over commodities CCPs pursuant to the Article 185 of the CDA.

ESMA assessment

27. 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.
28. 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.
29. On the basis of ESMA's experience in assessing common supervisory practices among European authorities, ESMA can conclude that these are not dissimilar to the ones applicable in Japan.
30. **Against this background ESMA advises the Commission to consider that Commodities CCPs are subject to effective supervision and enforcement in Japan.**

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

31. An equivalent system exists in Japan for the recognition of CCPs authorised under the legal regime of a third country. The system involves the third country CCP applying for a 'Foreign CCP' license from the JFSA, enabling them to provide the same services in Japan as they are authorised to provide in the third country.³

32. **ESMA assessed the Japanese system for the recognition of CCPs authorised under the legal regime of a third country as part of its September 2013 advice and advised the Commission to consider the legal framework of Japan as providing for an effective equivalent system for the recognition of CCPs authorised under third-country legal regimes.**

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

Jurisdictional level requirements

33. ESMA has undertaken a comparative analysis of the legally binding requirements which are applicable, at a jurisdictional level, to Commodities CCPs in Japan and the corresponding legally binding requirements for CCPs under EMIR. The substantive analysis is set out in Annex III.
34. As set out in the detailed analysis included in Annex III, there are a number of areas where the legally binding requirements which are applicable, at a jurisdictional level, to Commodities CCPs in Japan are not broadly equivalent to the legally binding requirements for CCPs under EMIR.
35. It should however be noted that ESMA's detailed analysis has been restricted to reviewing primary and secondary legislation, rules and regulations promulgated under primary and secondary legislation and legally binding documentation issued by MAFF and METI. This is in line with the mandate given to ESMA by the European Commission.

Other legal and supervisory arrangements

36. In addition to the legally binding requirements which are applicable, at a jurisdictional level, to Commodities CCPs in Japan, ESMA is aware that some Commodities CCPs authorised in Japan might, on an individual basis, have adopted (or may in future adopt) internal policies, procedures, rules, models and methodologies which have the effect of subjecting the CCP to standards that are broadly equivalent to the legally binding requirements for CCPs under EMIR. This is based on ESMA's understanding of a proposed supervisory Guideline for the supervision on Commodity CCPs which is expected to be put into effect in the near future.
37. The internal policies, procedures, rules, models and methodologies that some Commodities CCPs authorised in Japan might, on an individual basis, have adopted, could constitute legally binding requirements for the purposes of Article 25(6) of EMIR where, (a) such internal policies, procedures, rules, models and methodologies cannot be changed without the approval or non-objection of the Japanese authorities and (b) any departure by the CCP from, or failure to implement, such internal policies, procedures, rules, models and methodologies can give rise to possible enforcement action. ESMA understands that both of these criteria are satisfied insofar as the regulatory regime in Japan provides that Commodities CCPs rules cannot be changed without the approval or non-objection of MAFF and METI and any departure by a CCP (or where relevant its clearing members) from, or failure to implement, such internal policies, procedures, rules, models and methodologies can give rise to possible enforcement action.⁴
38. ESMA considers that where such internal policies, procedures, rules, models and methodologies do constitute legally binding requirements in accordance with the tests set out in paragraph 37 above, then these should also be taken into account. This solution should avoid any market disruption which

might occur in the absence of a recognition regime for Japanese Commodities CCPs. **Taking into account that the legally binding requirements which are applicable, at a jurisdictional level, to Commodities CCPs in Japan and the other legal and supervisory arrangements present in Japan, ESMA advises the Commission to consider that Commodities CCPs authorised in Japan do comply with legally binding requirements which, on a holistic basis, are equivalent to the requirements laid down in Title IV of EMIR, where such CCPs have adopted internal policies, procedures, rules, models and methodologies that constitute legally binding requirements in accordance with the tests set out in paragraph 37 above and where they incorporate provisions which, on a holistic basis, are broadly equivalent to the legally binding requirements for CCPs under EMIR (i.e. where the internal policies, procedures, rules, models and methodologies include provisions which, on a holistic basis, address the gaps identified in the relevant section of the detailed analysis set out at Annex III) in the following areas:**

- (1) **Organisational requirements.**
 - (2) **Requirements for senior management and the Board.**
 - (3) **Risk Committee requirements.**
 - (4) **Record keeping requirements.**
 - (5) **Conflicts of interest requirements.**
 - (6) **Business continuity requirements.**
 - (7) **General conduct of business requirements.**
 - (8) **Participation requirements.**
 - (9) **Transparency requirements.**
 - (10) **Segregation and portability requirements.**
 - (11) **Exposure management requirements.**
 - (12) **Margin requirements.**
 - (13) **Default fund requirements.**
 - (14) **Other financial resources requirements.**
 - (15) **Liquidity risk control requirements.**
 - (16) **Default waterfall requirements.**
 - (17) **Collateral requirements.**
 - (18) **Investment policy requirements.**
 - (19) **Default procedure requirements.**
 - (20) **Review of models, stress testing and back testing requirements.**
 - (21) **Settlement requirements.**
39. **In order to achieve the fundamental objectives that an equivalence assessment under EMIR should look at in respect of CCPs (i.e. the avoidance of risk importation to the EU, the protection of EU entities and investors and the prevention of regulatory arbi-**

trage), the solution proposed in this draft advice requires that a CCP applying for recognition under EMIR has adopted internal policies, procedures, rules, models and methodologies that address the differences identified in the final column of the table at Annex III for the areas highlighted above.

Conclusion on CCPs

40. ESMA advises the Commission to consider that Commodities CCPs authorised in Japan and that the legal framework of Japan provides for an effective equivalent system for the recognition of CCPs authorised under third-country legal regimes.
41. ESMA also advises the Commission to consider that the legal and supervisory arrangements of Japan ensure that Commodities CCPs authorised in Japan comply with legally binding requirements which are equivalent to the requirements laid down in Title IV of EMIR in respect of CCPs that have adopted internal policies, procedures, rules, models and methodologies that constitute legally binding requirements in accordance with the tests set out in paragraph 37 above and where they incorporate provisions which, on a holistic basis, are broadly equivalent to the legally binding requirements for CCPs under EMIR in the areas set out in paragraph 38 above.
42. On this basis, ESMA would only grant recognition to Commodities CCPs authorised in Japan which have in fact adopted internal policies, procedures, rules, models and methodologies which, on a holistic basis, incorporate provisions that are broadly equivalent to the legally binding requirements for CCPs under EMIR in the specific areas identified above and where ESMA has assessed that the relevant internal policies, procedures, rules, models or methodology do constitute a legally binding requirement in accordance with the tests set out in paragraph 37 above.
43. If a CCP authorised in Japan that was granted recognition by ESMA subsequently made changes to its internal policies, procedures, rules, models and methodologies in a way which meant that the CCP no longer complied with standards that were broadly equivalent to the legally binding requirements for CCPs under EMIR, then that CCP would no longer qualify for recognition, and would be subject to the withdrawal of its recognition pursuant to Article 25(5) of EMIR.
44. ESMA is aware that in future certain amendments to the FIEA will come into effect, as a result of which transactions regulated under the FIEA will include commodities derivatives transactions. In connection with these amendments to the FIEA, further amendments may also be made to the current regulations relating to CCPs and/or Commodities CCPs. Should the Commission require further technical advice following these future amendments then ESMA stands ready to assist.



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

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

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

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

This mandate is based on Regulation No 1095/2010 of the European Parliament and the Council of 24 November 2010 establishing a European Securities and Markets Authority (the "**ESMA Regulation**")³ and Regulation (EU) No 182/2011 of the European Parliament and the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers⁴.

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

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

In accordance with the established practice within the European Securities Committee,⁵ the Commission will continue, as appropriate, to consult experts appointed by the Member States in the preparation of these possible implementing acts.

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

³ OJ L 331, 15.12.2010, p. 84 - 119.

⁴ OJ L55/13, 28.2.2011, p. 13-18

⁵ Commission's Decision of 6.6.2001 establishing the European Securities Committee, OJ L191, 17.7.2001, p.45-46.



1. Context.

1.1 Scope.

CCPs

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

Trade repositories

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

Potential duplicative or conflicting requirements on market participants

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

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

1.2 Principles that ESMA should take into account.

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

- It should respect the requirements of the ESMA Regulation, and, to the extent that ESMA takes over the tasks of CESR in accordance with Art 8(1)(l) of the ESMA Regulation, take account of the principles set out in the Lamfalussy Report⁶ and those mentioned in the Stockholm Resolution of 23 March 2001⁷.
- The principle of proportionality: the technical advice should not go beyond what is necessary to achieve the objective of the implementing acts set out in the legislative act.
- While preparing its advice, ESMA should seek coherence within the regulatory framework of the Union.
- In accordance with the ESMA Regulation, ESMA should not feel confined in its reflection to elements that it considers should be addressed by the implementing acts but, if it finds it appropriate, it may indicate guidelines and recommendations that it believes should accompany the delegated acts to better ensure their effectiveness.
- ESMA will determine its own working methods depending on the content of the provisions being dealt with. Nevertheless, horizontal questions should be dealt with in such a way as to ensure coherence between different standards of work being carried out by the various expert groups.
- ESMA should provide comprehensive technical analysis on the subject matters described below covered by the delegated powers included in the relevant provision of the legislative act and its corresponding recitals as well as in the relevant Commission's request included in this mandate.
- The technical advice given by ESMA to the Commission should not take the form of a legal text. However, ESMA should provide the Commission with an "articulated" text which means a clear and structured text, accompanied by sufficient and detailed explanations for the advice given, and which is presented in an easily understandable language respecting current terminology in the Union.
- ESMA should address to the Commission any question they might have concerning the clarification on the text of the legislative act, which they should consider of relevance to the preparation of its technical advice.

2. Procedure.

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

⁶ Final Report of the Committee of Wise Men on the Regulation of European Securities Markets, chaired by M. Lamfalussy, Brussels, 15 February 2001. (http://ec.europa.eu/internal_market/securities/docs/lamfalussy/wisemen/final-report-wise-men_en.pdf)

⁷ Results of the Council of Economics and Finance Ministers, 22 March 2001, Stockholm Securities legislation, (<http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/01/105&format=HTML&aged=0&language=EN&guiLanguage=en>).



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

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

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

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

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

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

CCPs

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

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

- Phase I: the USA and Japan;
- Phase II: Switzerland, Australia, Dubai, India, Singapore and Hong Kong.

Trade repositories

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



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

- Phase I: the USA;
- Phase II: Hong Kong.

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

Potential duplicative or conflicting requirements

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

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

- Phase I: the USA and Japan;
- Phase II: Hong Kong, Switzerland, Canada and Australia.

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

- Phase I: the USA, Japan;
- Phase II: Hong Kong, Switzerland, Canada and Australia.

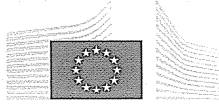
4. Indicative timetable.

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

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

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

ANNEX II – Updated Mandate from the European Commission – 13 June 2013



EUROPEAN COMMISSION
Directorate General Internal Market and Services
FINANCIAL MARKETS
Director

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

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

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

Dear Mr Maijoor,

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

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

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

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

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

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

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

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Emil Paulis', with a long horizontal line extending to the right.

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 Duplicative or Conflicting Requirements
US	1 September 2013	1 September 2013	1 September 2013
Japan	1 September 2013	1 September 2013	1 September 2013
Australia	1 October 2013	1 October 2013	1 October 2013
Canada			1 October 2013
Hong Kong	1 October 2013	1 October 2013	1 October 2013
India	1 October 2013		<i>To be determined</i>
Singapore	1 October 2013	1 October 2013	<i>To be determined</i>
South Korea	1 October 2013		<i>To be determined</i>
Switzerland	1 October 2013	<i>To be determined</i>	1 October 2013
Dubai	<i>Withdrawn</i>		

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

Description of the provision in Title IV of EMIR	Description of the corresponding Japanese provisions	Assessment of equivalence
<p>Organisational requirements</p> <p>A CCP must have robust governance arrangements, including a clear organisational structure with well-defined, transparent, and consistent lines of responsibility, effective processes to identify, manage, monitor and report the risks to which it is or might be exposed and adequate internal control mechanisms, including sound administrative and accounting procedures.⁵</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.⁶ <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.⁷</p>	<p>Organisational requirements</p> <ul style="list-style-type: none"> • Governance arrangements. <i>Under the CDA, CCPs are required to:</i> <p>Be a joint stock corporation (kabushiki kaisha) having a board of directors and a corporate auditor (or a board of directors and a committee).³⁵</p> <p>As part of the approval process for licensing, demonstrate to MAFF and METI that the articles of incorporation and business rules of the CCP conform to the applicable laws and regulations and are sufficient to conduct clearing services appropriately and with certainty.³⁶</p> <p>Obtain the prior permission of MAFF and METI where the CCP intends to amend its articles of incorporation or Business Rules.³⁷ • Risk management and internal control mechanisms. <i>Under the CDA, CCPs are required to:</i> <p>As part of the approval process for licensing, demonstrate to MAFF and METI that the CCP has</p> </p>	<p>Organisational requirements</p> <p><i>The Japanese regime for Commodities CCPs includes organisational requirements. Based on a review of the legally binding requirements which are applicable, at a jurisdictional level, to Commodities CCPs in Japan, these requirements are not equivalent to those of EMIR. However, the internal policies, procedures, rules, models and methodologies of individual CCPs, which are out of the scope of this assessment, may contain legally binding provisions equivalent to those of EMIR.</i></p> <ul style="list-style-type: none"> • Governance arrangements. Japanese Commodities CCPs are required to have a specific organisational structure, and the required governance arrangements required of Commodities CCPs are specified at a high level. However, EMIR includes more specific governance framework requirements while the Japanese regime prescribes broader and more general requirements and relies more heavily on supervisory processes. <p>There are no specific requirements for Japanese Commodities CCPs that are part of a group.</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.⁸</p> <p>A CCP which is part of a group must consider the group’s implications for its own governance arrangements, including (i) whether it has the necessary level of independence to meet its regulatory obligations as a separate legal entity, and (ii) whether its independence could be compromised by its group structure or any board members shared with other group entities.⁹</p> <p>A CCP must have adequate human resources to meet all of its obligations under EMIR, and should not share such resources with other group entities, unless under the terms of an outsourcing arrangement in accordance with EMIR, Art. 35.¹⁰</p> <p>To ensure that CCPs have the necessary levels of human resources, that CCPs are accountable for their activities, and that CCPs Competent Authorities have relevant points of contact within the CCPs they supervise, all CCPs should have at least a chief risk officer, a chief compliance officer and chief technology officer, which positions must be filled by dedicated employees of the CCP.¹¹</p> <ul style="list-style-type: none"> • Risk management and internal control mechanisms. A CCP must have a sound framework for the comprehensive management of all material risks, and must establish documented policies, procedures and systems and controls to identify measure, monitor and 	<p>provisions regarding the securing of the performance of obligations of clearing members.³⁸</p> <p>As part of the approval process for licensing, demonstrate to MAFF and METI that the procedures specified in its Business Rules conform to applicable laws and regulations and are sufficient to conduct the clearing services appropriately and with certainty.³⁹</p> <ul style="list-style-type: none"> • Compliance policy, procedures and Compliance function. <p><i>Under the CDA, CCPs are required to:</i></p> <p>As part of the approval process for licensing, demonstrate to MAFF and METI that the procedures specified in its Business Rules conform to applicable laws and regulations and are sufficient to conduct the clearing services appropriately and with certainty.⁴⁰</p> <ul style="list-style-type: none"> • Organisational structure and separation of reporting lines. <p><i>Under the CDA, CCPs are required to:</i></p> <p>As part of the approval process for licensing, demonstrate to MAFF and METI that the procedures specified in its Business Rules conform to applicable laws and regulations and are sufficient to conduct the clearing services appropriately and with certainty.⁴¹</p> <ul style="list-style-type: none"> • Remuneration policy. No corresponding 	<p>A Japanese Commodities CCP is not specifically required to have a chief risk, chief technology or chief compliance officer; and the Japanese regime does not specifically require that chief risk officers, chief technology and chief compliance officers are “dedicated employees.”</p> <ul style="list-style-type: none"> • Risk management and internal control mechanisms. EMIR specifically requires consideration of risks posed by interoperable CCPs, liquidity providers, central securities depositories, trading venues served by the CCP or other critical service providers, while the Japanese regime relies on more general language regarding consideration of the range of risks to which a Commodities CCP is exposed. <p>A Japanese Commodities CCP is not specifically required to have systems that allow clearing members or their clients to obtain information to apply risk management policies and procedures appropriately.</p> <p>The Japanese regime does not specifically require a Commodities CCP to ensure that its risk management function has the necessary authority, expertise and access to all relevant information.</p> <ul style="list-style-type: none"> • Compliance policy, procedures and Compliance function. The Japanese regime does not specifically require a Commodities CCP to establish, implement and maintain adequate policies and procedures to detect any risk
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<p>manage such risks. These must be structured to ensure that Clearing Members properly manage and contain the risks they pose to a CCP.¹²</p> <p>A CCP must take an integrated and comprehensive view of, and ensure that its risk management tools can manage and report on, all relevant risks, including risks from and to its Clearing Members (and to the extent practicable, their clients), and risks from and to other entities including interoperable CCPs, securities settlement and payment systems, settlement banks, liquidity providers, central securities depositories, trading venues served by the CCP and other critical service providers.¹³</p> <p>A CCP must have robust information and risk-control systems which allow the CCP and where appropriate, its Clearing Members, and to the extent practicable, their clients, to obtain timely information and apply risk management policies and procedures appropriately (including sufficient information to ensure that credit and liquidity exposures are monitored continuously at CCP-level, Clearing Member-level and, to the extent practicable, client-level).¹⁴</p> <p>A CCP must ensure that its risk management function has the necessary authority, expertise and access to all relevant information, and that it is sufficiently independent from the CCP's other functions.</p> <p>The chief risk officer must implement the CCP's risk management framework.¹⁵</p> <p>A CCP must have adequate internal control mechanisms to assist the board in monitoring the</p>	<p>provisions.</p> <ul style="list-style-type: none"> • Information technology systems. No corresponding provisions. • Disclosure. <p><i>Under the CDA, CCPs are required to:</i></p> <ul style="list-style-type: none"> • Specify in its Business Rules any participation requirements/criteria to be a clearing member.⁴² • Auditing. <p><i>Under the CDA, CCPs are required to:</i></p> <ul style="list-style-type: none"> • Be joint stock corporations which are subject to external audit according to general provision in the Companies Act.⁴³ 	<p>of failure by the CCP and its managers and employees to comply with the CCP's obligations.</p> <p>The Japanese regime does not specifically require that a Commodities CCP's rules, procedures and contractual arrangements are clear and comprehensive or that the CCP has a process for proposing and implementing changes to its rules and procedures including consultation with all affected clearing members or submitting proposed changes to the Japanese authorities.</p> <p>The Japanese regime does not specifically require that a Commodities CCP analyse potential conflicts of law.</p> <p>A Japanese Commodities CCP is not specifically required to establish and maintain a permanent and effective compliance function, which operates independently from the other functions of the CCP or that has the necessary authority, resources, expertise and access to all relevant information.</p> <ul style="list-style-type: none"> • Organisational structure and separation of reporting lines. A Japanese Commodities CCP is not required to have a remuneration committee or to establish appropriate remuneration policies. <p>The Japanese regime does not specifically define the responsibilities of a Commodities CCP's board, beyond requiring that there be a process and structures for conducting clearing</p>
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<p>adequacy and effectiveness of its risk management policies, procedures and systems (including sound administrative and accounting procedures, a robust compliance function and an independent internal audit function).¹⁶</p> <p>A CCP's financial statements must be prepared annually and audited by statutory auditors / audit firms within the meaning of Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts.¹⁷</p> <ul style="list-style-type: none"> • Compliance policy, procedures and Compliance function. A CCP must establish, implement and maintain adequate policies and procedures to detect any risk of failure by the CCP and its managers and employees to comply with the CCP's obligations under EMIR.¹⁸ <p>A CCP must ensure that its rules, procedures and contractual arrangements are clear and comprehensive and ensure compliance with EMIR, as well as all other applicable regulatory and supervisory requirements. These rules, procedures and contractual arrangements should be accurate, up-to-date and readily available to the CCPs Competent Authority, Clearing Members and (where appropriate) Clients. A CCP must have a process for proposing and implementing changes to its rules and procedures and, prior to implementing any material changes, should consult with all affected Clearing Members and submit the proposed changes to its CCPs Competent Authority.</p> <p>A CCP must identify and analyse potential conflicts of</p>		<p>appropriately.</p> <p>The Japanese regime does not specifically require a Commodities CCP's board to oversee accountability to shareholders, employees, customers and other stakeholders.</p> <p>The Japanese regime does not specifically define the responsibilities of a Commodities CCP's senior management including requiring it to be responsible for ensuring the consistency of a Commodities CCP's activities with the objectives and strategies determined by the board.</p> <p>The Japanese regime does not specifically require Commodities CCPs to have reporting lines for risk management, compliance and internal audit that are clear and separate from those of a Commodities CCP's other operations.</p> <ul style="list-style-type: none"> • Remuneration policy. A Japanese Commodities CCP is not specifically required to have a remuneration policy. <p>Information technology systems. A Japanese Commodities CCP is not specifically required to ensure that their systems have sufficient capacity to process all remaining transactions before the end of the day in circumstances in which a major disruption has occurred.</p> <p>A Japanese Commodities CCP is not specifically required to base its information technology systems on internationally recognised technical</p>
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<p>law issues and develop rules and procedures to mitigate legal risks resulting from such issues.¹⁹</p> <p>A CCP must establish and maintain a permanent and effective compliance function, which operates independently from the other functions of the CCP and has the necessary authority, resources, expertise and access to all relevant information.</p> <p>A CCP's chief compliance officer must, <i>inter alia</i>: (i) monitor the adequacy and effectiveness of a CCP's compliance policies; (ii) administer the compliance policies established by senior management and the board; (iii) report regularly to the board on compliance by the CCP and its employees with EMIR; (iv) establish procedures for the remediation of instances of non-compliance; and (v) ensure that persons involved in the compliance function do not perform the services or activities they monitor.</p> <ul style="list-style-type: none"> • Organisational structure and separation of reporting lines. A CCP must define the composition, role and responsibilities of board and senior management, and any board committees (including an audit committee and a remuneration committee).²⁰ <p>A CCP's board must be responsible for: (i) establishing the CCP's objectives and strategies; (ii) monitoring of senior management; (iii) establishing appropriate remuneration policies; (iv) establishment of the risk management function and oversight of the risk management, compliance, internal control and outsourcing functions; (v) oversight of compliance with EMIR; and (vi) accountability to shareholders,</p>		<p>standards or industry best practices.</p> <p>Disclosure. The Japanese regime does not specifically require Commodities CCPs to disclose information free of charge, but most information is required to be posted on the CCP's website.</p> <p>A Japanese Commodities CCP is not specifically required to disclose contracts with clearing members and clients, interoperability arrangements, use of collateral, eligible collateral and applicable haircuts, or a list of clearing members.</p> <p>Auditing. The Japanese regime does not specifically require that a Commodities CCP's clearing operations, risk management processes, and internal control mechanisms be subject to independent and frequent audit with the results reported to the CCP's board.</p> <p>A Japanese Commodities CCP is required to establish and maintain an internal audit but a Japanese CCP is not specifically required to ensure that audits may be performed on an event-driven basis at short notice.</p>
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<p>employees, customers and other stakeholders.²¹</p> <p>A CCP’s senior management must be responsible for: (i) ensuring consistency of a CCP’s activities with the objectives and strategies determined by the board; (ii) designing and establishing compliance and internal control procedures promoting the CCP’s objectives; (iii) regularly reviewing and testing internal control procedures; (iv) ensuring that sufficient resources are devoted to risk management and compliance; (v) the risk control process; and (vi) ensuring that risks posed to the CCP by its clearing and related activities are addressed.²²</p> <p>A CCP must maintain a clear separation between the reporting lines for risk management and those for the other operations of the CCP.²³</p> <p>A CCP must have clear and direct reporting lines between its board and senior management. The reporting lines for risk management, compliance and internal audit must be clear and separate from those of a CCP’s other operations.²⁴</p> <ul style="list-style-type: none"> • Remuneration policy. A CCP must adopt, implement and maintain a remuneration policy which promotes sound and effective risk management and does not create incentives to relax risk standards.²⁵ The policy must be designed, overseen and reviewed at least annually by the remuneration committee. The remuneration policy should be designed to align the level and structure of remuneration with prudent risk management, taking into account prospective risks as well as existing risks. In the case of variable remuneration, 		
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<p>the policy must take into account possible mismatches of performance and risk periods, and ensure payments are deferred appropriately. The fixed and variable components of total remuneration must be balanced and must be consistent with risk alignment. The remuneration of staff engaged in risk management, compliance and internal audit should be independent of the CCP's business performance.²⁶</p> <p>The remuneration policy should be independently audited on an annual basis (with the results being made available to the relevant CCPs Competent Authority).²⁷</p> <ul style="list-style-type: none"> • Information technology systems. A CCP must maintain information technology systems which are adequate to deal with the complexity, variety and type of services and activities it performs.²⁸ 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.²⁹ <p>A CCP must base its information technology systems on internationally recognized technical standards and industry best practices.</p> <p>A CCP must maintain a robust information security framework that appropriately manages its information security risk, including policies to protect information from unauthorised disclosure, ensure data accuracy and integrity and guarantee the availability of the CCP's</p>		
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<p>services.³⁰</p> <ul style="list-style-type: none"> • Disclosure. A CCP must make information relating to the following available to the public free of charge: (i) its governance arrangements; (ii) its rules (including default procedures, risk management systems, rights and obligations of Clearing Members and Clients, clearing services and rules governing access to the CCP (including admission, suspension and exit criteria for clearing membership), contracts with Clearing Members and Clients, interoperability arrangements and use of collateral and default fund contributions); (iii) eligible collateral and applicable haircuts; and (iv) a list of all current Clearing Members.³¹ • 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.³² <p>A CCP must establish and maintain an internal audit function which is separate and independent from the other functions (including management) and reports directly to the board. Its role is to (i) establish, implement and maintain an audit plan to examine and evaluate the adequacy and effectiveness of the CCP's systems, internal control mechanisms and governance arrangements, (ii) issue recommendations based on the result of work carried out in accordance with item (i), (iii) verify compliance with those recommendations and (iv) report internal audit matters to the board.</p> <p>Internal audit must assess the effectiveness of a CCP's risk management processes and control mechanisms,</p>		
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<p>in a manner proportionate to the risks faced by the different business lines.</p> <p>Internal audit assessments must be based on a comprehensive audit plan that is reviewed and reported to its CCPs Competent Authority at least annually.</p> <p>A CCP should also ensure that audits may be performed on an event-driven basis at short notice.³³</p> <p>A CCP's clearing operations, risk management processes, internal control mechanisms and accounts must be subject to independent audit at least annually.³⁴</p>		
<p>Senior Management and the Board</p> <p>The senior management of a CCP must be of sufficiently good repute and have sufficient experience to ensure the sound and prudent management of the CCP.⁴⁴</p> <p>A CCP must have a board. At least one third, and no less than two, members of the board must be independent.⁴⁵</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.⁴⁶</p>	<p>Senior Management and the Board</p> <p><i>Under the CDA, CCPs are required to:</i></p> <ul style="list-style-type: none"> • Be a joint stock corporation (kabushiki kaisha) having a board of directors and a corporate auditor (or a board of directors and a committee).⁵⁰ Accordingly, each director, board of directors, corporate auditor, or committee (or its executive officers) is subject to the general requirements of the Companies Act, including in relation to corporate governance, conflicts of interest and fiduciary duties. <p>Not have appointed the following persons to the position of officer of the CCP:</p>	<p>Senior Management and the Board</p> <p><i>The Japanese regime for Commodities CCPs includes requirements for senior management and the Board. Based on a review of the legally binding requirements which are applicable, at a jurisdictional level, to Commodities CCPs in Japan, these requirements are not equivalent to those of EMIR. However, the internal policies, procedures, rules, models and methodologies of individual CCPs, which are out of the scope of this assessment, may contain legally binding provisions equivalent to those of EMIR.</i></p> <p>A Japanese Commodities CCP is not specifically required to have at least one third, and no less than</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.⁴⁷ 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.⁴⁸</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.⁴⁹</p>	<ul style="list-style-type: none"> ○ a person for whom bankruptcy proceedings have been commenced and who has not obtained a restoration of rights; ○ a person who has been sentenced to imprisonment or more severe punished pursuant to any laws or has been sentenced to a fine pursuant to the CDA or any foreign law equivalent thereto and for whom five years has not passed since the day when the execution of the sentence ended or the date when the sentence ceased to be executed; ○ a person who was an officer of a Commodities Exchange, Commodities CCP or commodities futures commission merchant (or a foreign corporation holding any equivalent license) within 30 days prior to the date when such Commodities Exchange, Commodities CCP or commodities futures commission merchant (or foreign corporation) had its license rescinded under the CDA or any foreign law equivalent thereto (and five years have not passed since the rescindment date); ○ a person who was an officer of a participant member of a Commodities Ex- 	<p>two, independent members of its board.</p> <p>A Commodities CCP is not specifically required to ensure that compensation of independent and other non-executive board members is not linked to the business performance of the CCP.</p> <p>A Japanese Commodities CCP is not required to invite representatives of clients to board meetings for matters relating to transparency and segregation requirements.</p> <p>The Japanese regime does not require all minutes of Commodities CCP board meetings to be made available to the Japanese authorities.</p> <p>The Japanese regime does not specifically require that a Commodities CCP's board defines, determines and documents an appropriate level of risk tolerance and risk bearing capacity, that the board and senior management to ensure policies, procedures and controls are consistent with those levels or that the CCP's board assumes final responsibility for managing the CCP's risks.</p> <p>The Japanese regime for Commodities CCPs does not contain any provision which specifically determines the level of expertise, governance and duties of the board of directors.</p>
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	<p>change (or a foreign corporation holding any equivalent license) within 30 days prior to the date when such member had its membership rescinded pursuant to an order under the CDA or any foreign law equivalent thereto (and five years have not passed since the rescindment date); or</p> <ul style="list-style-type: none"> ○ a person who was ordered by the competent Minister to resign from his/her position as an officer of a Commodities Exchange, Commodities CCP or commodities futures commission merchant.⁵¹ <p>If any of the above criteria apply to an officer of a CCP, he/she shall no longer be qualified to hold his/her position.⁵²</p> <p>If a person is found to have become an officer of a CCP by way of wrongful means or when an officer of a CCP has violated the CDA or is the subject of administrative sanctions handed down by the competent Minister, the competent Minister may order the CCP to dismiss that officer.⁵³</p> <p>Each officer is subject to the general requirements of the Companies Act, including in relation to corporate governance, conflicts of interest and fiduciary duties. The CDA does not</p>	
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	contain any provision which specifically determines the level of expertise, governance and duties of such officers.	
<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.⁵⁴</p> <p>The risk committee should be chaired by an independent member of the board, hold regular meetings and report directly to the board.⁵⁵</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.⁵⁶ 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>When reviewing an application for a license as a CCP, MAFF and METI will examine whether, in light of its personnel structure, the applicant has knowledge and experience for conducting clearing services appropriately and with certainty and has sufficient social credibility.⁵⁷</p>	<p>Risk committee</p> <p><i>The Japanese regime for Commodities CCPs does not include risk committee requirements that are legally binding at a jurisdictional level. However, the internal policies, procedures, rules, models and methodologies of individual CCPs, which are out of the scope of this assessment, may contain legally binding provisions equivalent to those of EMIR.</i></p> <p>EMIR specifically requires CCPs to establish a risk committee that meets specified composition and procedural requirements. In contrast, the Japanese regime does not specifically require CCPs to establish a risk committee.</p>
<p>Record keeping</p> <p>A CCP must maintain, for at least 10 years, records relating to the services and activities it provides which are sufficient to enable its CCPs Competent Authority to monitor the CCP’s compliance with EMIR.⁵⁸</p> <p>A CCP must maintain, for at least 10 years following the termination of a contract, all information relating to that</p>	<p>Record keeping</p> <ul style="list-style-type: none"> • General requirements. <p>Record keeping requirements are enforceable under the licensing regime to which CCPs are subject, which subjects CCPs to inspections by MAFF and METI.⁶⁶</p>	<p>Record keeping</p> <p><i>The Japanese regime for Commodities CCPs includes record keeping requirements. Based on a review of the legally binding requirements which are applicable, at a jurisdictional level, to Commodities CCPs in Japan, these requirements are not equivalent to those of EMIR. However, the</i></p>

<p>contract (including sufficient information to enable the CCP to identify the original terms of that contract pre-clearing).⁵⁹</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.⁶⁰ <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 reconstruct the clearing process, in order to assess compliance with regulatory requirements.⁶¹</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;⁶² • 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;⁶³ • 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 	<ul style="list-style-type: none"> • Transaction records. No corresponding provisions. • Position records. No corresponding provisions. • Business records. <p><i>CCPs are required to:</i></p> <ul style="list-style-type: none"> • Prepare the following documents specified by the Companies Act: <ul style="list-style-type: none"> ○ financial statements including balance sheets and profit and loss statements, together with supplementary schedules thereto; and ○ business reports, together with supplementary schedules thereto. <p>Under the Companies Act, financial statements, business reports and their supplementary schedules may be prepared in electronic form and the CCP, as a joint stock company, must retain its financial statements and its supplementary schedules for 10 years.⁶⁷</p> <ul style="list-style-type: none"> • Records of data reported to a trade repository. No corresponding provisions. 	<p><i>internal policies, procedures, rules, models and methodologies of individual CCPs, which are out of the scope of this assessment, may contain legally binding provisions equivalent to those of EMIR.</i></p> <p>A Japanese Commodities CCP is subject to inspections of its business records, and is required to maintain business records for 10 years. EMIR is however, much more granular with regards to the type of records which a CCP must maintain.</p> <p>In particular, a Japanese Commodities 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.</p> <p>A Japanese Commodities CCP is not specifically required to maintain records of all activities relating to its business and internal organisation which are updated every time there is a material change to the relevant document.</p> <p>A Japanese Commodities CCP is not specifically required to maintain records of all information and data required to be reported to a trade repository.</p>
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<p>material change to the relevant document);⁶⁴ and</p> <ul style="list-style-type: none"> • Records of data reported to a trade repository. A CCP must maintain records of all information and data required to be reported to a trade repository (including time and date reported).⁶⁵ 		
<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 holdings⁶⁸ (“Qualifying Shareholders”).⁶⁹</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.⁷⁰</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).⁷¹</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;⁷² or • (i) the laws, regulations or administrative provisions of a third country which apply to such per- 	<p>Shareholders and members with qualifying holdings</p> <p><i>Under the CDA:</i></p> <ul style="list-style-type: none"> • A document describing major shareholders (any holder of 10% or more of the shares in the CCP) and a document describing the parent company and any subsidiaries must be submitted with any application form for a license as a CCP.⁷⁴ <p>Changes in such shareholders are not required to be reported.</p>	<p>Shareholders and members with qualifying holdings</p> <p><i>The Japanese regime for Commodities CCPs includes requirements for shareholders and members with qualifying holdings. Based on a review of the legally binding requirements which are applicable, at a jurisdictional level, to Commodities CCPs in Japan, these requirements are not equivalent to those of EMIR.</i></p> <p>The Japanese authorities are required to be notified of persons who are a shareholder of more than 10% of the voting rights in a Japanese Commodities CCP at the time the CCP applies for licensing, however, any changes to the shareholders are not required to be reported to the Japanese authorities.</p> <p>Furthermore, the Japanese authorities do not have the power to require a shareholder of a Japanese Commodities CCP to reduce their shareholding if the Japanese authorities are not satisfied with the suitability of the owners or consider that the shareholder might prevent the effective exercise of</p>

<p>sons, or (ii) difficulties associated with the enforcement of such provisions, prevent the effective exercise of the Competent Authority’s supervisory functions.⁷³</p>		<p>the authorities supervisory functions.</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.⁷⁵ 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.⁷⁶ • Changes to Shareholders. Any natural or legal person (or persons acting in concert) (the “proposed acquirer”) who decides to (i) acquire a qualifying holding⁷⁷ 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</p>	<p>Information to competent authorities</p> <p><i>Under the CDA:</i></p> <ul style="list-style-type: none"> • Changes to Management. The names of addresses of officers of a CCP are to be described in the application form for a license as a CCP. When there is a change in the any of the recorded names and addresses, the CCP must notify such change to the competent Minister by submitting a notification form.⁸¹ • Changes to Shareholders. No corresponding provisions. 	<p>Information to competent authorities</p> <p><i>The Japanese regime for Commodities CCPs includes requirements for the provision of information on changes to management which are applicable, at a jurisdictional level, to Commodities CCPs in Japan, and which are broadly equivalent to those of EMIR. However, the Japanese regime for Commodities CCPs does not include requirements for the provision of information on changes to qualifying holdings that are legally binding at a jurisdictional level.</i></p> <p>When there are changes to a Japanese CCP’s management, the CCP must report information about the change to the Japanese authorities. This information is not required to be as granular as that provided for under EMIR however these requirements are directed towards the same broad objectives as EMIR.</p> <p>When there are changes in shareholders, a Commodities CCP is not required to report information about the change to the Japanese authorities.</p> <p>The Japanese authorities are also not expressly required to take appropriate measures when the conduct of a member is likely to be prejudicial to the sound and prudent management of a</p>

<p>would fall below 10%, 20%, 30% or 50% or (y) the CCP would cease to be the subsidiary of the proposed vendor, must first notify the relevant CCPs Competent Authority and provide certain relevant information.</p> <p>Within two working days of receipt of the notifications referred to above, the CCPs Competent Authority must acknowledge receipt. Within a further 60 working days (the “assessment period”) the CCPs Competent Authority must assess the suitability of the proposed acquirer and the financial soundness of the proposed acquisition, in accordance with the criteria set out in EMIR, Art. 32.⁷⁸ Within the first 50 working days of the assessment period, the CCPs Competent Authority may request any further information necessary to complete the assessment.⁷⁹</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.⁸⁰</p>		Commodities CCP.
<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>	<p>Assessment of qualifying holdings</p> <ul style="list-style-type: none"> • No corresponding provisions. 	<p>Assessment of qualifying holdings</p> <p><i>The Japanese regime for Commodities CCPs does not include requirements for the assessment of qualifying holdings which are applicable, at a jurisdictional level, to CCPs in Japan, and which are broadly equivalent to those of EMIR.</i></p> <p>The Japanese authorities are not expressly required</p>

- the reputation and soundness of the proposed acquirer and any person who will direct the CCP’s business as a result of the proposed acquisition (with particular regard to the type of business pursued by the CCP);
- whether the CCP will be able to comply and continue to comply with EMIR (with particular regard to whether the corporate group which the CCP will enter post-acquisition has a structure which makes it possible for the CCPs Competent Authority to exercise effective supervision, to exchange information with other Competent Authorities and to determine the allocation of responsibility among Competent Authorities); and
- whether there are reasonable grounds to suspect that money laundering or terrorist financing is being or has been committed in connection with the proposed acquisition, or that the proposed acquisition could increase the risk thereof.⁸²

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.⁸³

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.⁸⁴ 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

to assess the financial soundness of proposed acquisitions, whether a Commodities CCP will be able to continue to comply with the applicable requirements or make it possible to effectively supervise the CCP, or whether there are grounds to consider that money laundering or terrorist financing has been committed in connection with the proposed acquisition.

assessment.⁸⁵

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.⁸⁶

<p>Conflicts of interest</p> <p>A CCP must maintain effective written organisational and administrative arrangements⁸⁷ 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.⁸⁸</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.⁸⁹</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.⁹⁰</p>	<p>Conflicts of interest</p> <p><i>Under the CDA:</i></p> <ul style="list-style-type: none"> • An officer or employee of a CCP, or a person who was formerly in such a position shall neither divulge nor misappropriate any secret which he/she has learned during the course of the business.⁹¹ • A CCP is prohibited from providing discriminatory treatment to any specific clearing members.⁹² • The board of directors of a CCP must comply with the principles and procedures stipulated by the Companies Act 2005 with regards to conflicts of interests.⁹³ Such requirements including to perform their duties in a loyal manner and in compliance with laws and regulations, the articles of incorporation and to obtain the approval of shareholders for certain transactions. 	<p>Conflicts of interest</p> <p><i>The Japanese regime for Commodities CCPs includes conflict of interest requirements. Based on a review of the legally binding requirements which are applicable, at a jurisdictional level, to Commodities CCPs in Japan, these requirements are not equivalent to those of EMIR. However, the internal policies, procedures, rules, models and methodologies of individual CCPs, which are out of the scope of this assessment, may contain legally binding provisions equivalent to those of EMIR.</i></p> <p>The Japanese regime does not expressly impose a requirement such that a Commodities CCP must identify and manage potential conflicts of interest, maintain procedures to resolve conflicts of interest or disclose conflicts of interest to clearing members and clients.</p> <p>The Japanese regime does not expressly address conflicts arising by board members serving on multiple boards.</p>
<p>Business continuity</p> <p>The CCP must maintain an organisational structure that ensures continuity and orderly functioning in the performance of its services and activities.⁹⁴</p> <p>A CCP must implement and maintain a business continuity</p>	<p>Business continuity</p> <p>When reviewing an application for a license as a CCP, MAFF and METI will examine whether the procedures specified in the CCP's Business Rules conform to applicable laws and regulations and are sufficient to</p>	<p>Business continuity</p> <p><i>The Japanese regime for Commodities CCPs does not include business continuity requirements that are legally binding at a jurisdictional level. However, the internal policies, procedures, rules,</i></p>

<p>policy and disaster recovery plan to ensure the preservation of its functions, the recovery of operations and the fulfilment of its obligations. The disaster recovery plan must at least allow the recovery of all transactions at the time of disruption to allow the CCP to continue to operate with certainty and to complete settlement on the scheduled date.⁹⁵</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.⁹⁶ • Business impact analysis. A CCP must conduct a business impact analysis to identify its critical functions and have in place arrangements to ensure the continuity of its critical functions based on various disaster scenarios⁹⁷. • Disaster recovery. A CCP must maintain a second- 	<p>conduct the clearing services appropriately and with certainty and the CCP has sufficient financial basis for soundly conducting clearing services.¹⁰³</p> <ul style="list-style-type: none"> • Strategy and policy. No corresponding provisions. • Business impact analysis. No corresponding provisions. • Disaster recovery. No corresponding provisions. • Testing and monitoring. No corresponding provisions. • Maintenance. No corresponding provisions. • Crisis management. No corresponding provisions. • Communications. No corresponding provisions. 	<p><i>models and methodologies of individual CCPs, which are out of the scope of this assessment, may contain legally binding provisions equivalent to those of EMIR.</i></p> <p>A Japanese Commodities CCP is not specifically required to maintain an organisational structure that ensures continuity and orderly functioning in the performance of its services and activities.</p> <p>A Japanese Commodities CCP is not specifically required to have a maximum acceptable downtime no higher than 2 hours.</p> <p>A Japanese Commodities CCP is not specifically required to have a secondary processing site capable of ensuring continuity of all its critical functions, with a different geographical risk profile.</p> <p>The Japanese regime does not specifically require Commodities CCPs to have a crisis management function to act in case of emergency.</p> <p>The Japanese regime does not expressly require a Commodities CCP to test its business continuity arrangements at regular intervals.</p>
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<p>ary processing site capable of ensuring continuity of all of its critical functions, which must have a geographical risk profile which is different from that of the primary site.⁹⁸</p> <ul style="list-style-type: none"> • Testing and monitoring. A CCP must test and monitor its business continuity policy and disaster recovery plan at regular intervals taking into account scenarios of large scale disasters and switchovers between primary and secondary sites.⁹⁹ • 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.¹⁰⁰ • 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.¹⁰¹ • 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).¹⁰² 		
<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)</p>	<p>Outsourcing</p> <p>A CCP may not outsource activities related to the assumption of obligations.¹⁰⁶</p>	<p>Outsourcing</p> <p><i>The Japanese regime for Commodities CCPs includes outsourcing requirements which are applicable, at a jurisdictional level, to CCPs in</i></p>

<p>outsourcing does not result in the delegation of its responsibilities; (ii) the CCP’s relationship and obligations towards its Clearing Members and their Clients are not altered; (iii) the conditions for authorizing of the CCP do not effectively change, (iv) outsourcing does not prevent the exercise of the CCP’s supervisory and oversight functions, or deprive the CCP of necessary systems and controls to manage its risks; (v) the service provider implements equivalent business continuity requirements to those required under EMIR; (vi) the CCP retains necessary expertise and resources to evaluate the quality of services provided, the organisational and capital adequacy of the service provider, and to manage the risks associated with outsourcing on an ongoing basis; (vii) the CCP has direct access to relevant information relating to the outsourcing functions; and (viii) the service provider cooperates with the relevant CCPs Competent Authority, and (viii) .the service provider protects any confidential information relating to the CCP and its clearing members and clients or, where the service provider is established in a third country, ensures that the data protection standards of that third country, or those set out in the agreement between the parties concerned, are comparable to the data protection standards in effect in the Union.¹⁰⁴</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. ¹⁰⁵</p>		<p><i>Japan, and which are broadly equivalent to those of EMIR.</i></p> <p>The Japanese regime for Commodities CCPs goes beyond EMIR requirement by preventing a CCP from outsourcing activities related to its clearing obligations.</p>
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<p>Conduct of business rules – general provisions</p> <p>When providing services to its Clearing Members and their Clients, CCPs must act fairly and professionally in line with the best interests of such Clearing Members and Clients and sound risk management.¹⁰⁷</p> <p>A CCP must have accessible, transparent and fair rules for the prompt handling of complaints.¹⁰⁸</p>	<p>Conduct of business rules – general provisions</p> <p><i>Under the CDA, a CCP is required to:</i></p> <ul style="list-style-type: none"> Specify in its Business Rules any participation requirements/criteria to be a clearing member.¹⁰⁹ The CDA also stipulates that a CCP shall not unjustly discriminate against any clearing member.¹¹⁰ 	<p>Conduct of business rules – general provisions</p> <p><i>The Japanese regime for Commodities CCPs includes general conduct of business requirements which are applicable, at a jurisdictional level, to Commodities CCPs in Japan, and which are broadly equivalent to those of EMIR.</i></p> <p>A Japanese Commodities CCP is not specifically required to act in the best interests of clearing members when providing services to them; however, a Japanese Commodities CCP must not unjustly discriminate against any clearing member.</p> <p>On balance, these differences do not undermine the consistency of the objectives of the Japanese and EMIR regimes.</p>
<p>Participation requirements</p> <p>A CCP must establish categories of admissible Clearing Members and admission criteria, following the advice of the risk committee. Such criteria must be non-discriminatory, transparent and objective so as to ensure fair and open access to the CCP and must ensure that clearing members have sufficient financial resources and operational capacity to meet the obligations arising from participation in a CCP. Criteria that restrict access may only be permitted if their objective is to control risk.¹¹¹</p> <p>Clearing members that clear transactions on behalf of their</p>	<p>Participation requirements</p> <p><i>Under the CDA, a CCP is required to:</i></p> <ul style="list-style-type: none"> Specify in its Business Rules any participation requirements/criteria to be a clearing member.¹¹⁶ <p>The CDA also stipulates that a CCP shall not unjustly discriminate against any clearing member.¹¹⁷</p>	<p>Participation requirements</p> <p><i>The Japanese regime for Commodities CCPs includes participation requirements. Based on a review of the legally binding requirements which are applicable, at a jurisdictional level, to Commodities CCPs in Japan, these requirements are not equivalent to those of EMIR. However, the internal policies, procedures, rules, models and methodologies of individual CCPs, which are out of the scope of this assessment, may contain legally binding provisions equivalent to those of EMIR.</i></p>

<p>clients must have the necessary additional financial resources and operational capacity to perform this activity. The CCP's rules for clearing members must allow it to gather relevant basic information to identify, monitor and manage relevant concentrations of risk relating to the provision of services to clients. Clearing Members must, upon request, inform the CCP about the criteria and arrangements they adopt to allow their Clients to access the services of the CCP. Responsibility for ensuring that Clients comply with their obligations remains with Clearing Members.¹¹²</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.¹¹³</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.¹¹⁴</p> <p>A CCP must ensure the application of the above criteria on an ongoing basis and must annually conduct a comprehensive review of compliance with these provisions by its Clearing Members.¹¹⁵</p>		<p>A Japanese Commodities CCP is not specifically required to have rules that allow the CCP to identify, monitor and manage concentrations of risk relating to the clearing member's provision of services to clients.</p> <p>Japanese Commodities CCPs are not specifically required to have objective procedures for suspension of clearing members justified by a comprehensive risk analysis and to only deny access to clearing members that meet participation requirements where justified in writing.</p> <p>The Japanese regime does not require Commodities CCPs to conduct annually a comprehensive review of compliance with the participation requirements by its clearing members.</p>
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<p>Transparency</p> <p>A CCP and its Clearing Members must publicly disclose the prices and fees associated with each service provided separately (including discounts and rebates and the conditions to benefit from such reductions).¹¹⁸</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.¹¹⁹</p> <p>A CCP must allow its Clearing Members and Clients separate access to the specific services provided.¹²⁰</p> <p>A CCP must inform Clearing Members and their Clients of the risks associated with the services provided.¹²¹</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.¹²²</p>	<p>Transparency</p> <p><i>Under the CDA, a CCP is required to:</i></p> <ul style="list-style-type: none"> Specify in its Business Rules any participation requirements/criteria to be a clearing member.¹²³ 	<p>Transparency</p> <p><i>The Japanese regime for Commodities CCPs includes transparency requirements. Based on a review of the legally binding requirements which are applicable, at a jurisdictional level, to Commodities CCPs in Japan, these requirements are not equivalent to those of EMIR. However, the internal policies, procedures, rules, models and methodologies of individual CCPs, which are out of the scope of this assessment, may contain legally binding provisions equivalent to those of EMIR.</i></p> <p>A Japanese Commodities CCP is not specifically required to disclose: (i) to the public, the volumes of cleared transactions for each class of instruments cleared, the operational and technical requirements relating to communication protocols used with third parties or any breaches by clearing members of its participation requirements, (ii) to clearing members, the price information used to calculate its end-of-day exposures to its Clearing Members.</p> <p>A Japanese Commodities CCP is not specifically required to allow clearing members and clients separate access to specific services it provides nor is it required to price each service separately.</p> <p>A Japanese Commodities CCP is not specifically required to inform clearing members and their clients of the risks associated with the services provided.</p>
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<p>Segregation and portability</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”).¹²⁴</p> <p>A Clearing Member must keep separate records and accounts that enable it to distinguish both in accounts held with the CCP and in its own accounts its assets and positions from the assets and positions held for the account of its Clients.</p> <p>A Clearing Member must offer its Clients, at least, the choice between omnibus client segregation and individual client segregation and inform them of the costs and level of protection (as further described below) associated with each option. The Client must confirm its choice in writing. When a Client opts for individual client segregation, any margin in excess of the Client’s requirement must also be posted to the CCP and distinguished from the margins of other Clients or Clearing Members and must not be exposed to losses connected to positions recorded in another account.¹²⁵</p> <p>CCPs and Clearing Members must publicly disclose the</p>	<p>Segregation and portability</p> <p><i>Under the CDA, a CCP is required to:</i></p> <ul style="list-style-type: none"> • Segregate the cash and securities deposited by a clearing member for securing the performance of its obligations to a CCP from other assets held by the CCP.¹³⁰ <p>Set out in their Business Rules the way the CCP intends to hold and manage cash and securities deposited by a clearing member for securing the performance of its obligations to a CCP.¹³¹</p>	<p>Segregation and portability</p> <p><i>The Japanese regime for Commodities CCPs includes segregation and portability requirements. Based on a review of the legally binding requirements which are applicable, at a jurisdictional level, to Commodities CCPs in Japan, these requirements are not equivalent to those of EMIR. However, the internal policies, procedures, rules, models and methodologies of individual CCPs, which are out of the scope of this assessment, may contain legally binding provisions equivalent to those of EMIR.</i></p> <p>Japanese Commodities CCPs are subject to a single segregation regime (segregation of client assets from the assets of the CCP) and the EMIR concept of individual segregation does not feature, including with it, provisions such as the requirement for clearing members to pass excess margin to the CCP.</p> <p>A Japanese Commodities CCP is not specifically required to publicly disclose the levels of protection offered, including the costs and main legal implications (including information relating to treatment on insolvency) of each level of protection or to offer those services on reasonable commercial terms.</p> <p>The Japanese regime does not specify the legal mechanism through which a Commodities CCP has the right to use margin or default fund contributions, or specifically require Commodities CCPs to publicly disclose a right of use with respect</p>
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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.¹²⁶

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).¹²⁷

The requirement to distinguish assets and positions with the CCP in accounts is satisfied where:

- (a) the assets and positions are recorded in separate accounts;
- (b) the netting of positions recorded on different accounts is prevented;
- (c) the assets covering the positions recorded in an account are not exposed to losses connected to positions recorded in another account.¹²⁸

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.¹²⁹

to margins or default fund contributions.

<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.¹³²</p>	<p>Exposure management</p> <p><i>Under the CDA, a CCP is required to:</i></p> <ul style="list-style-type: none"> Specify in its Business Rules matters concerning the securing of the performance of obligations of clearing members.¹³³ <p>When reviewing an application for a license as a CCP, MAFF and METI will examine whether the procedures specified in the CCP’s Business Rules conform to applicable laws and regulations and are sufficient to conduct the clearing services appropriately and with certainty and the CCP has sufficient financial basis for soundly conducting clearing services.¹³⁴</p>	<p>Exposure management</p> <p><i>The Japanese regime for Commodities CCPs includes exposure management requirements. Based on a review of the legally binding requirements which are applicable, at a jurisdictional level, to Commodities CCPs in Japan, these requirements are not equivalent to those of EMIR. However, the internal policies, procedures, rules, models and methodologies of individual CCPs, which are out of the scope of this assessment, may contain legally binding provisions equivalent to those of EMIR.</i></p> <p>A Japanese Commodities CCP is not specifically required to measure and assess its liquidity and credit exposures to its clearing members or to any CCP with which it has entered into interoperability arrangements.</p>
<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.¹³⁵</p>	<p>Margin requirements</p> <p><i>Under the CDA, a CCP is required to:</i></p> <ul style="list-style-type: none"> Specify in its Business Rules matters concerning the securing of the performance of obligations of clearing members.¹⁴⁹ <p>When reviewing an application for a license as a CCP, MAFF and METI will examine whether the procedures specified in its Business Rules conform to applicable laws and regulations and are sufficient to conduct the</p>	<p>Margin requirements</p> <p><i>The Japanese regime for Commodities CCPs includes margin requirements. Based on a review of the legally binding requirements which are applicable, at a jurisdictional level, to Commodities CCPs in Japan, these requirements are not equivalent to those of EMIR. However, the internal policies, procedures, rules, models and methodologies of individual CCPs, which are out of the scope of this assessment, may contain legally binding provisions equivalent to those of EMIR.</i></p>

CCPs should follow principles to adequately tailor their margin levels to the characteristics of each financial instrument or portfolio they clear.¹³⁶ 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.¹³⁷ A CCP must adopt models and parameters in setting its margin requirements that capture the risk characteristics of the products cleared and take into account the interval between margin collections, market liquidity and the possibility of changes over the duration of the transaction. The models and parameters must be validated by the Competent Authority and subject to an opinion in accordance with Article 19.¹³⁸

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.¹³⁹

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).¹⁴⁰

- **Percentage.** When calculating IM, a CCP must use at least the following minimum confidence intervals:

clearing services appropriately and with certainty.¹⁵⁰

The CDA also requires a CCP to receive clearing margin from clearing members, clearing intermediaries and persons who consign the intermediation of consignment, as the case may be, in relation to market transactions.¹⁵¹

- **Percentage.** As part of the approval process for licensing, demonstrate to MAFF and METI that the CCP has provisions regarding the securing of the performance of obligations of clearing members.¹⁵²
- **Time horizon for the calculation of historical volatility.** As part of the approval process for licensing, demonstrate to MAFF and METI that the CCP has provisions regarding the securing of the performance of obligations of clearing members.¹⁵³
- **Time horizons for the liquidation period.** As part of the approval process for licensing, demonstrate to MAFF and METI that the CCP has provisions regarding the securing of the performance of obligations of clearing members.¹⁵⁴
- **Portfolio margining.** As part of the approval process for licensing, demonstrate to MAFF and METI that the CCP has provisions regarding the securing of the performance of obligations of clearing members.¹⁵⁵

A Japanese Commodities CCP is not specifically required to call and collect margins on an intraday basis when predefined thresholds are exceeded.

A Japanese Commodities CCP is not specifically required to have its margin models reviewed and validated by a qualified and independent party, or by the Japanese authorities.

When calculating initial margin, a Japanese Commodities CCP is not required to use a specific confidence interval.

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

A Japanese Commodities CCP is not specifically required to calculate initial margin using historical volatility data from at least the latest 12-month period, which must capture a full range of market conditions, including periods of stress.

The Japanese regime does not specify minimum liquidation times based on the specific characteristics of particular products or portfolios.

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

A Japanese Commodities CCP is not required to take into account the procyclical effects of revisions to their margin levels and a Japanese CCP is not specifically required to ensure that its policy for selecting and revising the confidence interval,

<p>(i) for OTC derivatives, 99.5%; and (ii) for other financial instruments, 99%.¹⁴¹ 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).¹⁴²</p> <p>However, CCPs may apply an alternative confidence interval of 99% to OTC derivatives that have the same risk characteristics as derivatives executed on a regulated market or equivalent third country market, provided that the risks of the OTC derivatives contracts cleared are appropriately mitigated, taking into account the criteria listed above.¹⁴³</p> <p>CCPs must inform the Competent Authority and their Clearing Members of the criteria used to determine the margin percentage for each class of financial instruments.</p> <ul style="list-style-type: none"> • 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 	<ul style="list-style-type: none"> • Procyclicality. As part of the approval process for licensing, demonstrate to MAFF and METI that the CCP has provisions regarding the securing of the performance of obligations of clearing members.¹⁵⁶ 	<p>liquidation period and look back period deliver stable and prudent margin requirements that limit procyclicality to the extent the soundness and financial security of the CCP is not affected.</p>
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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.¹⁴⁴

- 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).¹⁴⁵ 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.¹⁴⁶ 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 coun-

terparty 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.¹⁴⁷
- **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

<p>those that would be calculated using a volatility estimated over a ten-year historical look back period.¹⁴⁸</p>		
<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.¹⁵⁷</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.¹⁵⁸ A CCP may establish more than one default fund for the different classes of financial instruments that it clears.¹⁵⁹</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 	<p>Default fund</p> <p><i>Under the CDA, a CCP is required to:</i></p> <ul style="list-style-type: none"> • Specify in its Business Rules matters concerning the securing of the performance of obligations of clearing members.¹⁶³ <p>When reviewing an application for a license as a CCP, MAFF and METI will examine whether the procedures specified in its Business Rules conform to applicable laws and regulations and are sufficient to conduct the clearing services appropriately and with certainty.¹⁶⁴</p> <ul style="list-style-type: none"> • Framework and governance. As part of the approval process for licensing, demonstrate to MAFF and METI that the CCP has provisions regarding the securing of the performance of obligations of clearing members.¹⁶⁵ • Identifying extreme but plausible market conditions. As part of the approval process for licensing, demonstrate to MAFF and METI that the CCP has provisions regarding the securing of the performance of obligations of clearing members.¹⁶⁶ • Reviewing extreme but plausible scenarios As part of the approval process for li- 	<p>Default fund</p> <p><i>The Japanese regime for Commodities CCPs includes default fund requirements requirements. Based on a review of the legally binding requirements which are applicable, at a jurisdictional level, to Commodities CCPs in Japan, these requirements are not equivalent to those of EMIR. However, the internal policies, procedures, rules, models and methodologies of individual CCPs, which are out of the scope of this assessment, may contain legally binding provisions equivalent to those of EMIR.</i></p> <p>A Japanese Commodities CCP is not specifically required to maintain pre-funded financial resources sufficient to meet its financial obligations to its clearing members notwithstanding a default by the clearing member creating the largest financial exposure for the CCP or the default of the clearing members to which it has the second and third largest exposures, if the sum of their exposures is greater than the clearing member to which it has the largest exposure.</p> <p>A Japanese Commodities CCP is not specifically required to define the types of extreme but plausible market conditions that would expose it to the greatest risk or to perform stress testing that will allow it to make a reasonable calculation of the</p>

<p>that could expose it to the greatest risk.¹⁶⁰</p> <ul style="list-style-type: none"> • 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; (c) reflect additional risks to the CCP arising from the simultaneous failure of entities in the same group as the Defaulting Clearing Member; (d) individually identify all of the markets to which a CCP is exposed in a Clearing Member default scenario, and for each identified market specify extreme but plausible conditions based on (i) a range of historical scenarios, 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.¹⁶¹ • 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.¹⁶² 	<p>censing, demonstrate to MAFF and METI that the CCP has provisions regarding the securing of the performance of obligations of clearing members.¹⁶⁷</p>	<p>financial resources needed to meet its financial resources requirement.</p> <p>The Japanese regime does not specifically require a Commodities CCP's board to annually or more frequently review its minimum financial resources framework.</p>
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<p>Other financial resources</p> <p>A CCP must maintain sufficient pre-funded available financial resources (“pre-funded financial resources”) to cover potential losses that exceed losses to be covered by margin requirements and the default fund. The combination of a CCP’s default fund and pre-funded financial resources must be sufficient to cover the default of the two Clearing Members to which it has the largest exposure under extreme but plausible market conditions. Pre-funded financial resources must include dedicated resources of the CCP, must be freely available to the CCP and may not be used to meet a CCP’s regulatory capital requirements under EMIR, Art. 16.¹⁶⁸</p> <p>A CCP may require a non-defaulting Clearing Member to provide additional funds in the event of a default of another Clearing Member. The Clearing Members of a CCP must have limited exposure to the CCP.¹⁶⁹</p>	<p>Other financial resources</p> <p><i>Under the CDA, a CCP is required to:</i></p> <ul style="list-style-type: none"> Specify in its Business Rules matters concerning the securing of the performance of obligations of clearing members.¹⁷⁰ <p>When reviewing an application for a license as a CCP, MAFF and METI will examine whether the procedures specified in its Business Rules conform to applicable laws and regulations and are sufficient to conduct the clearing services appropriately and with certainty and whether the CCP has sufficient financial basis for soundly conducting clearing services.¹⁷¹</p>	<p>Other financial resources</p> <p><i>The Japanese regime for Commodities CCPs includes other financial resources requirements. Based on a review of the legally binding requirements which are applicable, at a jurisdictional level, to Commodities CCPs in Japan, these requirements are not equivalent to those of EMIR. However, the internal policies, procedures, rules, models and methodologies of individual CCPs, which are out of the scope of this assessment, may contain legally binding provisions equivalent to those of EMIR.</i></p> <p>A Japanese Commodities CCP is not specifically required to maintain pre-funded financial resources, freely available to the CCP and not used to meet regulatory capital requirements that are sufficient to cover the default of the two clearing members to which it has the largest exposure under extreme but plausible market conditions.</p> <p>Clearing members are not required to have limited exposure to a Japanese Commodities CCP.</p>
<p>Liquidity risk controls</p> <p>A CCP must at all times have access to adequate liquidity to perform its services and activities.¹⁷² 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</p>	<p>Liquidity risk controls</p> <p><i>Under the CDA, a CCP is required to:</i></p> <ul style="list-style-type: none"> Specify in its Business Rules matters concerning the securing of the performance of obligations of clearing members.¹⁷⁷ <p>When reviewing an application for a license as a CCP, MAFF and METI will examine whether the procedures</p>	<p>Liquidity risk controls</p> <p><i>The Japanese regime for Commodities CCPs includes liquidity risk control requirements. Based on a review of the legally binding requirements which are applicable, at a jurisdictional level, to Commodities CCPs in Japan, these requirements are not equivalent to those of EMIR. However, the internal policies, procedures, rules, models and methodologies of individual CCPs, which are out of</i></p>

<p>exposures.¹⁷³</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.¹⁷⁴ <p>The framework must include a liquidity plan approved by the board after consultation of the risk committee containing procedures relating to the monitoring and management of liquidity risk (including inter alia identification of sources of liquidity risk, daily assessment and valuation of liquid assets to cover liquidity needs, assessing timescales over which liquid financial resources should be available, processes in the event of liquidity shortfalls, etc.).</p> <p>The CCP should assess the liquidity risk it faces including where the CCP or its Clearing Members cannot settle their payment obligations when due as part of the clearing or settlement process, taking also</p>	<p>specified in its Business Rules conform to applicable laws and regulations and are sufficient to conduct the clearing services appropriately and with certainty and whether the CCP has sufficient financial basis for soundly conducting clearing services.¹⁷⁸</p> <ul style="list-style-type: none"> • Assessment of liquidity risk. As part of the approval process for licensing, demonstrate to MAFF and METI that the CCP has provisions regarding the securing of the performance of obligations of clearing members.¹⁷⁹ • Access to liquidity. As part of the approval process for licensing, demonstrate to MAFF and METI that the CCP has provisions regarding the securing of the performance of obligations of clearing members.¹⁸⁰ • Concentration risk. As part of the approval process for licensing, demonstrate to MAFF and METI that the CCP has provisions regarding the securing of the performance of obligations of clearing members.¹⁸¹ 	<p><i>the scope of this assessment, may contain legally binding provisions equivalent to those of EMIR.</i></p> <p>The Japanese regime does not specifically require Commodities CCPs to establish a liquidity risk management framework that includes the assessment of potential future liquidity needs under a wide range of stress scenarios or the liquidity risk generated by its investment policy in extreme but plausible conditions.</p> <p>A Japanese Commodities CCP is not specifically required to assess the liquidity risk it faces where it or its clearing members cannot settle their payment obligations when due.</p> <p>A Japanese Commodities CCP is not specifically required to measure its liquidity needs by taking into account a default by the two clearing members to which it has the largest exposures.</p> <p>The Japanese regime does not specifically require a Commodities CCP to have a liquidity plan approved by the board after consultation with the risk committee.</p> <p>The Japanese regime does not specifically require a Commodities CCP to maintain, in each relevant currency, liquid resources commensurate with its liquidity requirements.</p> <p>A Japanese Commodities CCP is not specifically required to monitor the concentration of its liquidity risk exposure or to apply exposure or concentration limits.</p>
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<p>into account the CCP’s investment activities. The risk management framework must address the liquidity needs stemming from the CCP’s relationship with any entity towards which the CCP has a liquidity exposure, including settlement banks, payment systems, securities settlement systems, liquidity providers, custodian banks, etc. as well as interdependencies between such entities.</p> <ul style="list-style-type: none"> • Access to liquidity. A CCP must maintain, in each relevant currency, liquid resources commensurate with its liquidity requirements, which are limited to: (i) cash deposited at a central bank; (ii) cash deposited 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.¹⁷⁵ • 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.¹⁷⁶ 		
<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</p>	<p>Default waterfall</p> <p><i>Under the CDA, a CCP is required to:</i></p> <ul style="list-style-type: none"> • Specify in its Business Rules matters concerning the securing of the performance of obligations of clearing members.¹⁸⁵ 	<p>Default waterfall</p> <p><i>The Japanese regime for Commodities CCPs includes default waterfall requirements. Based on a review of the legally binding requirements which are applicable, at a jurisdictional level, to Commodities CCPs in Japan, these requirements are not equivalent to those of EMIR. However, the</i></p>

<p>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.¹⁸²</p> <ul style="list-style-type: none"> <p>Calculation of the amount of the CCP’s own resources to be used in the default waterfall. A CCP must keep, and indicate separately in its balance sheet, an amount of dedicated financial resources for the purposes of item (iii) of the default waterfall. This amount should at least equal 25% of the CCP’s minimum capital (including retained earnings and reserves) pursuant to EMIR, Art. 16.¹⁸³ 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> <p>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).¹⁸⁴</p> 	<p>When reviewing an application for a license as a CCP, MAFF and METI will examine whether the procedures specified in its Business Rules conform to applicable laws and regulations and are sufficient to conduct the clearing services appropriately and with certainty.¹⁸⁶</p> <p>The CDA also provides that a CCP shall have the right to be compensated from the clearing deposit of a defaulting clearing member in preference to other creditors and if the amount is still insufficient, the CCP shall have the right to receive payment in preference over other creditors with regard to the clearing deposits of other clearing members, pro rata in accordance with the amount of the clearing deposit deposited by each clearing member.¹⁸⁷</p> <ul style="list-style-type: none"> <p>Calculation of the amount of the CCP’s own resources to be used in the default waterfall. As part of the approval process for licensing, demonstrate to MAFF and METI that the CCP has provisions regarding the securing of the performance of obligations of clearing members.¹⁸⁸</p> <p>Maintenance of the amount of the CCP’s own resources to be used in the default waterfall. As part of the approval process for licensing, demonstrate to MAFF and METI that the CCP has provisions regarding the securing of the performance of obligations of clearing members.¹⁸⁹</p> 	<p><i>internal policies, procedures, rules, models and methodologies of individual CCPs, which are out of the scope of this assessment, may contain legally binding provisions equivalent to those of EMIR.</i></p> <p>A Japanese Commodities CCP is not specifically required to apply the same default waterfall sequence as prescribed under EMIR for a CCP.</p> <p>A Japanese Commodities CCP is not required to include a prescribed amount of its own resources as part of the default waterfall as is required under EMIR of a CCP.</p> <p>A Japanese Commodities CCP is not specifically required to inform the Japanese authorities if its financial resources fall below a certain amount.</p>
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<p>Collateral requirements</p> <p>A CCP must only accept highly liquid collateral with minimal credit and market risk to cover initial and ongoing exposure to its Clearing Members. Bank guarantees may be posted as collateral by non-financial counterparties, provided that the CCP takes such guarantees into account when calculating exposure to a bank that is a Clearing Member. A CCP must apply adequate haircuts to reflect the potential for collateral's value to decline over the interval between their last revaluation and the time by which they can be liquidated, taking into account the liquidity risk that may follow the default of a market participant and the concentration risk on certain assets.¹⁹⁰</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 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 authori- 	<p>Collateral requirements</p> <p><i>Under the CDA, a CCP is required to:</i></p> <ul style="list-style-type: none"> • Specify in its Business Rules matters concerning the securing of the performance of obligations of clearing members.¹⁹⁶ <p>When reviewing an application for a license as a CCP, MAFF and METI will examine whether the procedures specified in its Business Rules conform to applicable laws and regulations and are sufficient to conduct the clearing services appropriately and with certainty.¹⁹⁷</p> <p>The CDA also requires a CCP to receive clearing margin from clearing members, clearing intermediaries and persons who consign the intermediation of consignment, as the case may be, in relation to market transactions.¹⁹⁸</p> <ul style="list-style-type: none"> • General policies and valuing collateral. The CDA requires a CCP to specify matters concerning eligible collateral in its Business Rules.¹⁹⁹ • Cash collateral. Collateral is required to be limited to cash and other securities which are specified by such CCP's Business Rules.²⁰⁰ • Financial instruments, bank guarantees and gold. Collateral is required to be 	<p>Collateral requirements</p> <p><i>The Japanese regime for Commodities CCPs includes collateral requirements. Based on a review of the legally binding requirements which are applicable, at a jurisdictional level, to Commodities CCPs in Japan, these requirements are not equivalent to those of EMIR. However, the internal policies, procedures, rules, models and methodologies of individual CCPs, which are out of the scope of this assessment, may contain legally binding provisions equivalent to those of EMIR.</i></p> <p>A Japanese Commodities CCP is not specifically required to accept only highly liquid collateral and the Japanese regime does not specify the types of collateral that are deemed highly liquid or a criteria-based approach to determine whether assets are highly liquid.</p> <p>The Japanese regime does not specifically require Commodities 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.</p> <p>A Japanese Commodities CCP is not required to monitor on a near to real time basis the credit quality, market liquidity and price volatility of each asset accepted as collateral.</p> <p>A Japanese Commodities CCP is not specifically required to demonstrate to the Japanese authorities</p>

<p>ties that it is able to manage the risks.¹⁹¹</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.¹⁹² • 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.¹⁹³ • Haircuts. A CCP must establish and implement policies to determine prudent haircuts to apply to collateral value. The CCP must demonstrate to the competent authorities that haircuts are calculated in a conservative manner to limit as far as possible procyclical effects, taking into account relevant criteria (including the type of asset and level of credit risk associated with the financial instrument based on the CCP's internal assessment, which must not rely exclusively on external opinions and which must take into account risk arising from the establishment of the issuer in a particular country; the maturity of the asset; the historical and hypothetical future price volatility of the asset in stressed market conditions; the liquidity of the underlying market, including bid/ask spreads; foreign exchange risk, if any; and wrong way risk). A CCP must 	<p>limited to cash and other securities which are specified by such CCP's Business Rules.²⁰¹</p> <ul style="list-style-type: none"> • Haircuts. As part of the approval process for licensing, demonstrate to MAFF and METI that the CCP has provisions regarding the securing of the performance of obligations of clearing members.²⁰² • Concentration limits. As part of the approval process for licensing, demonstrate to MAFF and METI that the CCP has provisions regarding the securing of the performance of obligations of clearing members.²⁰³ 	<p>that haircuts are calculated in a conservative manner to limit as far as possible procyclical effects.</p> <p>The Japanese regime does not specifically require a Commodities CCP to establish and implement policies to ensure that collateral remains sufficiently diversified to allow its liquidation within a defined holding period.</p> <p>A Japanese Commodities CCP is also not specifically required to establish concentration limits for collateral.</p>
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<p>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.¹⁹⁴</p> <ul style="list-style-type: none"> • 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. <p>A CCP must determine concentration limits at the levels of individual issuers, types of issuer, types of assets, each Clearing Member and all Clearing Members, in a conservative manner, taking into account all relevant criteria (including economic sector, geographic region and activity of issuers, levels of credit risk of instruments and issuers and liquidity and price volatility of instruments). Moreover, a CCP must ensure that no more than 10% of its collateral (25% if more than 50% is in the form of bank guarantees) is guaranteed by a single credit institution or entities of the same group. In calculating the limits, a CCP must include the total exposure of the CCP to an issuer (credit lines, deposits, savings accounts, money-market instruments, reverse repurchase facilities, etc.) and must aggregate and treat as a single risk its exposures to all instruments issued by the issuer or by a group entity, explicitly guaranteed by the issuer or a group</p>		
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<p>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.¹⁹⁵</p>		
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<p>Investment policy</p> <p>A CCP's investments must be capable of being liquidated rapidly with minimal adverse price effect. Capital not invested in accordance with these rules must not be taken into account for purposes of capital requirement under EMIR, Art. 16 or the default waterfall under EMIR, Art. 45(4).</p> <p>A CCP may not invest its capital or the sums arising from the requirements laid down in Article 41, 42, 43 or 44 (margin, default fund, dedicated own resources, liquidity risk management) in its own securities or those of its parent undertaking or its subsidiaries.²⁰⁴</p> <ul style="list-style-type: none"> • Highly liquid financial instruments. A CCP must only invest its financial resources in cash or highly liquid financial instruments with minimal market and credit risk. Only debt instruments with low credit and market risk are eligible investments and only where they are issued or guaranteed by a government, central bank, multilateral development bank, the EFSF or the ESM; the debt instruments must be freely transferable, with price data published regularly and with a diverse group of buyers and sellers including in stressed conditions. The average time-to-maturity of the CCP's portfolio must not exceed two years and the currency of the debt instruments must be one in which the CCP clears transactions or is able to risk manage. Derivative contracts can only be invested in by a CCP as part of the CCP's default management procedure.²⁰⁵ • Highly secured arrangements for the deposit of financial instruments. Financial instruments 	<p>Investment policy</p> <p><i>Under the CDA, a CCP is required to:</i></p> <ul style="list-style-type: none"> • Specify in its Business Rules matters concerning the securing of the performance of obligations of clearing members.²¹¹ <p>When reviewing an application for a license as a CCP, MAFF and METI will examine whether the procedures specified in its Business Rules conform to applicable laws and regulations and are sufficient to conduct the clearing services appropriately and with certainty.²¹²</p> <ul style="list-style-type: none"> • Highly liquid financial instruments. Margin and a default fund contributions must be invested by a in the form of cash or Japanese government bonds.²¹³ <p>As part of the approval process for licensing, demonstrate to MAFF and METI that the CCP has provisions regarding the securing of the performance of obligations of clearing members.²¹⁴</p> <ul style="list-style-type: none"> • Highly secured arrangements for the deposit of financial instruments. As part of the approval process for licensing, demonstrate to MAFF and METI that the CCP has provisions regarding the securing of the performance of obligations of clearing members.²¹⁵ <p>The CDA also provides that a CCP shall specify</p>	<p>Investment policy</p> <p><i>The Japanese regime for Commodities CCPs includes investment policy requirements. Based on a review of the legally binding requirements which are applicable, at a jurisdictional level, to Commodities CCPs in Japan, these requirements are not equivalent to those of EMIR. However, the internal policies, procedures, rules, models and methodologies of individual CCPs, which are out of the scope of this assessment, may contain legally binding provisions equivalent to those of EMIR.</i></p> <p>The Japanese regime does not specifically require Commodities CCPs to deposit financial instruments posted at the CCP as margin or default fund contributions with operators of securities settlement systems that ensure the full protection of such financial instruments.</p> <p>When a Commodities CCP deposits assets with a third party, the Japanese regime does not specifically require the CCP to ensure that assets belonging to clearing members are identifiable separately from the assets belonging to the CCP and from assets belonging to a third party.</p> <p>A Commodities CCP is not specifically required to take into account its overall credit risk exposures to individual obligors in making its investment decisions or to ensure that its overall risk exposure to any individual obligor remains within acceptable</p>
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<p>posted with a CCP as margin or default fund contributions must be deposited with operators of securities settlement systems that ensure the full protection of such financial instruments. If unavailable, other highly secure arrangements at a central bank or an authorised financial institution may be used (subject to the institution having low credit risk and, in the case of third-country institutions, robust accounting practices, internal controls and segregation provisions).²⁰⁶</p> <ul style="list-style-type: none"> • Highly secured arrangements for maintaining cash. Cash may only be deposited by a CCP through the use of central banks' standing deposit facilities or through highly secure arrangements with authorised financial institutions (subject to the institution having low credit risk and, in the case of third-country institutions, robust accounting practices, internal controls and segregation provisions). Where secure arrangements with authorised financial institutions are used then the deposit must be in a currency in which the CCP clears transactions or is able to risk manage and at least 95% of the cash must be collateralised with highly liquid financial instruments meeting most of the requirements under Article 45²⁰⁷. <p>Where a CCP deposits assets with a third party, it must ensure that the assets belonging to the Clearing Members are identifiable separately from the assets belonging to the CCP and from assets belonging to that third party by means of differently titled accounts on the books of the third party or any other equivalent measures that achieve the same level of protection. A CCP must have prompt access to the financial</p>	<p>in its Business Rules matters concerning the way it intends to hold and manage clearing deposits received.²¹⁶</p> <p>Highly secured arrangements for maintaining cash. The CDA provides that a CCP shall deposit cash with commercial banks, in the trust of financial institutions engaged in trust business or in Japanese government bonds.²¹⁷</p> <p>As part of the approval process for licensing, demonstrate to MAFF and METI that the CCP has provisions regarding the securing of the performance of obligations of clearing members.²¹⁸</p> <p>The CDA also provides that a CCP shall specify in its Business Rules matters concerning the way it intends to hold and manage clearing deposits received and matters concerning the cash, securities and other items to be deposited for settlement.²¹⁹</p> <ul style="list-style-type: none"> • Concentration limits. As part of the approval process for licensing, demonstrate to MAFF and METI that the CCP has provisions regarding the securing of the performance of obligations of clearing members.²²⁰ 	<p>concentration limits.</p> <p>Commodities CCPs in Japan are not explicitly required to deposit cash with central banks or to collateralise 95% of the cash maintained with commercial banks.</p> <p>No restriction comparable to the one in the EU regime has been found with respect to the investment in derivatives.</p>
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<p>instruments when required.²⁰⁸</p> <ul style="list-style-type: none"> <p>Concentration limits. A CCP must take into account its overall credit risk exposures to individual obligors in making its investment decisions and must ensure that its overall risk exposure to any individual obligor remains within acceptable concentration limits.²⁰⁹ 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.²¹⁰</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.²²¹</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.²²²</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.²²³</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.²²⁴</p> <p>Where a CCP keeps records and accounts for a Clearing</p>	<p>Default procedures</p> <p><i>Under the CDA, a CCP is required to:</i></p> <ul style="list-style-type: none"> Specify in its Business Rules matters concerning the securing of the performance of obligations of clearing members.²²⁸ <p>When reviewing an application for a license as a CCP, MAFF and METI will examine whether the procedures specified in its Business Rules conform to applicable laws and regulations and are sufficient to conduct the clearing services appropriately and with certainty.²²⁹</p> <p>The CDA also provides that a CCP shall have the right to be compensated from the clearing deposit of a defaulting clearing member in preference to other creditors and if the amount is still insufficient, the CCP shall have the right to receive payment in preference over other creditors with regard to the clearing deposits of other clearing members, pro rata in accordance with the amount of the clearing deposit deposited by each clearing member.²³⁰</p> <p>Where a CCP stipulates, in its Business Rules, a method of settlement with regard to unsettled obligations, if special liquidation proceedings, bankruptcy proceedings, rehabilitation proceedings or reorganisation proceedings are commenced in relation to a clearing member, then calculation of the amount of claims which the CCP or the clearing member has with regard to unsettled obligations and other methods of settlement in relation to such proceedings shall be conduct-</p>	<p>Default procedures</p> <p><i>The Japanese regime for Commodities CCPs includes default procedure requirements. Based on a review of the legally binding requirements which are applicable, at a jurisdictional level, to Commodities CCPs in Japan, these requirements are not equivalent to those of EMIR. However, the internal policies, procedures, rules, models and methodologies of individual CCPs, which are out of the scope of this assessment, may contain legally binding provisions equivalent to those of EMIR.</i></p> <p>A Japanese Commodities CCP is not specifically required to set out in detail the procedures to be followed in the event the default of a clearing member is not declared by the CCP.</p> <p>A Japanese Commodities CCP is not expressly required to inform the Japanese authorities when it considers that a clearing member will not be able to meet its future obligations.</p> <p>A Japanese Commodities CCP is not required to verify that its default procedures are enforceable.</p> <p>EMIR contains provisions which contemplate the transfer of client positions upon a clearing member default based on the type of segregation, whereas the Japanese regime for Commodities CCPs does not address the transfer of client positions.</p>
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<p>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 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.²²⁵ • individual client segregation basis, the CCP must contractually commit itself to trigger the procedures for the transfer of the assets and positions held by the Defaulting Clearing Member for the account of the relevant Client to another Clearing Member designated by the Client, on its request and without the need for the Defaulting Clearing Member’s consent; that other Clearing Member may be obliged to accept those assets and positions only where it has contractually committed itself towards the Client to do so. It for any reason such transfer does not take place within the timeframe specified in the CCP’s operating rules, the CCP may take all steps permitted by its rules to actively manage its risks in relation to those positions, in- 	<p>ed in accordance with the provisions of the Business Rules.²³¹</p>	
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<p>cluding liquidating the assets and positions held by the Defaulting Clearing Member for the Client.²²⁶</p> <p>Clients' collateral distinguished by a CCP in accordance with EMIR's requirements for omnibus client segregation and individual client segregation must be used only to cover positions held for their account. Any balance owed by the CCP after the completion of a Defaulting Clearing Member's default management process must be returned to those Clients (if known to the CCP), or to the Clearing Member for the account of its Clients (if not).²²⁷</p>		
<p>Review of models, stress testing and back testing</p> <ul style="list-style-type: none"> • Model validation and testing programmes. A CCP must regularly review the models and parameters it has adopted to calculate margin requirements, default fund contributions, collateral requirements and other risk control mechanisms. Such models must be subject to frequent stress tests to assess resilience in extreme but plausible market conditions and back tests to assess the reliability of the underlying methodology. Material revisions or adjustments to the CCP's models and parameters, valuation models and validation policies should be subject to risk committee review, independent validation and validation from the CCP's Competent Authority and ESMA. The adopted models and parameters, including any significant change thereto, must be subject to an opinion of the college pursuant to Article 19 of EMIR. ESMA will ensure that information on the results of the 	<p>Review of models, stress testing and back testing</p> <p>When reviewing an application for a license as a CCP, MAFF and METI will examine whether the procedures specified in its Business Rules conform to applicable laws and regulations and are sufficient to conduct the clearing services appropriately and with certainty.²⁴²</p> <ul style="list-style-type: none"> • Model validation and testing programmes. As part of the approval process for licensing, demonstrate to MAFF and METI that the CCP has provisions regarding the securing of the performance of obligations of clearing members.²⁴³ • Back testing. As part of the approval process for licensing, demonstrate to MAFF and METI that the CCP has provisions regarding the securing of the performance of obligations of 	<p>Review of models, stress testing and back testing</p> <p><i>The Japanese regime for Commodities CCPs includes review of models, stress testing and back testing requirements that are legally binding at a jurisdictional level. Based on a review of the legally binding requirements which are applicable, at a jurisdictional level, to Commodities CCPs in Japan, these requirements are not equivalent to those of EMIR. However, the internal policies, procedures, rules, models and methodologies of individual CCPs, which are out of the scope of this assessment, may contain legally binding provisions equivalent to those of EMIR.</i></p> <p>A Japanese Commodities CCP is not specifically required to inform regulators of the results of the tests of its models and parameters or to submit material revisions or adjustments to the risk committee, competent authority or to independent</p>

<p>stress tests is passed on to the ESAs to enable them to assess the exposure of financial undertakings to the default of CCPs. A CCP shall regularly assess the theoretical and empirical properties of its models.²³²</p> <ul style="list-style-type: none"> • Back testing. A CCP must have in place a programme in relation to back testing of margin coverage on a daily basis based on an ex-post comparison of observed outcomes with expected outcomes derived from margin models. Back testing results must be periodically reported to the risk committee and made available to clearing member and clients.²³³ • 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.²³⁴ Sensitivity analysis must be performed on a number of actual and representative clearing member portfolios. Back testing results must be periodically reported to the risk committee. • Stress testing – total and liquid financial resources. A CCP must have in place a programme to stress test its total financial resources and liquid financial resources to ensure that they 	<p>clearing members.²⁴⁴</p> <ul style="list-style-type: none"> • Sensitivity testing and analysis. As part of the approval process for licensing, demonstrate to MAFF and METI that the CCP has provisions regarding the securing of the performance of obligations of clearing members.²⁴⁵ • Stress testing. As part of the approval process for licensing, demonstrate to MAFF and METI that the CCP has provisions regarding the securing of the performance of obligations of clearing members.²⁴⁶ • Review of models using test results. As part of the approval process for licensing, demonstrate to MAFF and METI that the CCP has provisions regarding the securing of the performance of obligations of clearing members.²⁴⁷ • Reverse stress tests. As part of the approval process for licensing, demonstrate to MAFF and METI that the CCP has provisions regarding the securing of the performance of obligations of clearing members.²⁴⁸ • Testing default procedures. As part of the approval process for licensing, demonstrate to MAFF and METI that the CCP has provisions regarding the securing of the performance of obligations of clearing members.²⁴⁹ • Frequency. As part of the approval process 	<p>review, or to submit the results of back testing to its risk committee or clearing members.</p> <p>A Japanese Commodities CCP is not specifically required to analyse its financial resources coverage by conducting stress tests at least daily.</p> <p>A Japanese Commodities CCP is not specifically required to perform coverage monitoring so as to promptly test and if applicable review its models and adjust margin requirements, haircuts and correlation for purposes of portfolio margining in case of changing market conditions.</p> <p>A Japanese Commodities CCP is not specifically required to perform reverse stress tests designed to identify under which market conditions the combination of its margin and other financial resources may provide insufficient coverage of credit exposures and for which its liquid financial resources may be insufficient, including by modeling extreme market conditions beyond what is considered plausible.</p> <p>A Japanese Commodities CCP is not required to test its collateral haircut policies at least monthly.</p> <p>The Japanese Commodities regime does not specifically require a CCP to validate its liquidity risk management frameworks, valuation models, correlation performance in relation to portfolio margining, or testing results.</p> <p>The Japanese Commodities regime does not require a CCP to review its models for default fund</p>
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<p>are sufficient²³⁵.</p> <ul style="list-style-type: none"> • Maintaining sufficient coverage. A CCP must have in place a programme to recognise changes in market conditions and, if necessary, to adapt its margin requirements, including the haircuts it imposes²³⁶. • 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 them²³⁷. • 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.²³⁸ • 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.²³⁹ • Frequency. A CCP must conduct a comprehen- 	<p>for licensing, demonstrate to MAFF and METI that the CCP has provisions regarding the securing of the performance of obligations of clearing members.²⁵⁰</p> <ul style="list-style-type: none"> • Information to be publicly disclosed. As part of the approval process for licensing, demonstrate to MAFF and METI that the CCP has provisions regarding the securing of the performance of obligations of clearing members.²⁵¹ 	<p>contributions or to regularly test key aspects of default procedures.</p> <p>A Japanese Commodities CCP is not specifically required to publicly disclose the general principles underlying its models and their methodologies, its margin-setting methodology, the nature of tests performed, a high level summary of the test results and any corrective actions undertaken or key aspects of its default procedures.</p>
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<p>sive validation of its models and their methodologies, its liquidity risk management framework, valuation models, correlation performance in relation to portfolio margining and testing programmes at least annually. A CCP must analyse and monitor its model performance and financial resources coverage in the event of default and its liquidity risk management framework by back-testing margin coverage and conducting stress tests at least daily. A CCP must conduct a detailed thorough analysis of testing results at least monthly (and more frequently if market conditions are stressed or expected to be stressed) to ensure that stress testing scenarios, models, underlying parameters and assumptions are correct. A CCP must conduct sensitivity analysis at least monthly (and more frequently if markets are unusually volatile or less liquid). A CCP must test collateral haircut policies at least monthly. A CCP must conduct reverse stress tests and review its default procedures at least quarterly with simulation exercises at least annually.²⁴⁰</p> <ul style="list-style-type: none"> • Information to be publicly disclosed. A CCP must publicly disclose the general principles underlying its models and their methodologies, the nature of the tests performed, and a high level summary of the test results and any corrective actions undertaken. A CCP must also make available key aspects of its default procedures, including: (i) the circumstances in which action may be taken and by whom, (ii) the scope of actions which may be taken; (iii) mechanisms to address a CCP's obligations to non-defaulting Clearing Members; and (iv) mecha- 		
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<p>nisms to help address the Defaulting Clearing Member's obligations to its Clients.²⁴¹</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.²⁵² • Securities settlement risk. A CCP must clearly state its obligations with regard to deliveries of financial instruments, including whether it has an obligation to make or receive delivery of such instruments. If so, it must (as far as possible) eliminate principal risk through the use of delivery-versus-payment mechanisms to the extent possible.²⁵³ • Settlement finality rules also apply in accordance with the Settlement Finality Directive²⁵⁴. 	<p>Settlement</p> <ul style="list-style-type: none"> • Cash settlement risk. No corresponding provisions. • Securities settlement risk. No corresponding provisions. 	<p>Settlement</p> <p><i>The Japanese regime for Commodities CCPs does not include settlement requirements that are legally binding at a jurisdictional level. However, the internal policies, procedures, rules, models and methodologies of individual CCPs, which are out of the scope of this assessment, may contain legally binding provisions equivalent to those of EMIR.</i></p> <p>A Japanese Commodities CCP is not specifically required to use central bank money where practical and available to settle its transactions.</p> <p>A Japanese Commodities CCP is not specifically required to clearly state its obligations with regard to deliveries of financial instruments or to eliminate principal risk through the use of delivery-versus-payment mechanisms to the extent possible when it has an obligation to make or receive delivery of financial instruments.</p>

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- ¹ Articles 167 and 173 of the CDA
- ² Article 184, paragraph 1 of the CDA.
- ³ Source: Article 156-20-2 of the FIEA
- ⁴ Article 182 of the CDA
- ⁵ EMIR, Art. 26(1) and Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 3 and 4.
- ⁶ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 3(1) and (2).
- ⁷ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 3(1) and (2).
- ⁸ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 3(7).
- ⁹ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 3(5).
- ¹⁰ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 3(3).
- ¹¹ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Recital 12 and Art. 3(4).
- ¹² Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 4(1).
- ¹³ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 4(2).
- ¹⁴ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 4(4).
- ¹⁵ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 4(5).
- ¹⁶ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 4(6).
- ¹⁷ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 4(7).
- ¹⁸ EMIR, Art. 26(2) and Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 5(1).
- ¹⁹ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 5.
- ²⁰ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 7(1).
- ²¹ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 7(2).
- ²² Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 7(3).
- ²³ EMIR, Art. 26(4).
- ²⁴ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 7(6).
- ²⁵ EMIR, Art. 26(5).
- ²⁶ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 8(1) to (3).
- ²⁷ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 8(4).
- ²⁸ EMIR, Art. 26(6).
- ²⁹ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 8.
- ³⁰ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 8.
- ³¹ EMIR, Art. 26(7); Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 10.
- ³² EMIR, Art. 26(8).
- ³³ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 11(1) to (4).
- ³⁴ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 11(5).
- ³⁵ Article 169.1(1) of the CDA.
- ³⁶ Article 169.1(ii) of the CDA.
- ³⁷ Article 182 of the CDA.
- ³⁸ Article 175.2(5) of the CDA.
- ³⁹ Article 169.1(2) and 169.1(3) of the CDA.
- ⁴⁰ Article 169.1(2) and 169.1(3) of the CDA.
- ⁴¹ Article 169.1(2) and 169.1(3) of the CDA.
- ⁴² Article 174.1 of the CDA.
- ⁴³ Article 327 of the Companies Act.
- ⁴⁴ EMIR, Art. 27(1).
- ⁴⁵ EMIR, Art. 27(2).
- ⁴⁶ EMIR, Art. 2(28).
- ⁴⁷ EMIR, Art. 27(2).
- ⁴⁸ EMIR, Art. 27(3).
- ⁴⁹ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 4(3).
- ⁵⁰ Article 169.1(1) of the CDA.
- ⁵¹ Article 172 of the CDA.
- ⁵² Article 172 and 49.2 of the CDA.
- ⁵³ Article 186.4 of the CDA.
- ⁵⁴ EMIR, Art. 28(1).
- ⁵⁵ EMIR, Art. 28(2).
- ⁵⁶ EMIR, Art. 28(3).
- ⁵⁷ Article 169.1 of the CDA.
- ⁵⁸ EMIR, Art. 29(1).
- ⁵⁹ EMIR, Art. 29(2).
- ⁶⁰ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 12.
- ⁶¹ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Recital 16.
- ⁶² Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 13.
- ⁶³ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 14.
- ⁶⁴ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 15.
- ⁶⁵ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 16.
- ⁶⁶ Article 184 of the CDA.

- ⁶⁷ Articles 423 and 435 of the Companies Act.
- ⁶⁸ 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).
- ⁶⁹ EMIR, Art. 30(1).
- ⁷⁰ EMIR, Art. 30(2).
- ⁷¹ EMIR, Art. 30(4).
- ⁷² EMIR, Art. 30(3).
- ⁷³ EMIR, Art. 30(5).
- ⁷⁴ Article 66 of the Enforcement Ordinance of the CDA.
- ⁷⁵ EMIR, Art. 31(1).
- ⁷⁶ EMIR, Art. 31(1).
- ⁷⁷ 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).
- ⁷⁸ EMIR, Art. 31(2).
- ⁷⁹ EMIR, Art. 31(3).
- ⁸⁰ EMIR, Art. 31(5) and (6).
- ⁸¹ Article 168.1(5) and 171 of the CDA.
- ⁸² EMIR, Art. 32(1).
- ⁸³ EMIR, Art. 32(2).
- ⁸⁴ EMIR, Art. 32(3).
- ⁸⁵ EMIR, Art. 32(4).
- ⁸⁶ EMIR, Art. 32(6), (7).
- ⁸⁷ 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).
- ⁸⁸ EMIR, Art. 33(1).
- ⁸⁹ EMIR, Art. 33(2).
- ⁹⁰ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Recital 13.
- ⁹¹ Articles 176 of the CDA.
- ⁹² Article 177 of the CDA.
- ⁹³ Article 355, 356, 365-1 of the Companies Act 2005.
- ⁹⁴ EMIR, Art. 26(3).
- ⁹⁵ EMIR, Art. 34 (1) and (2).
- ⁹⁶ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 17.
- ⁹⁷ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 18.
- ⁹⁸ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 19.
- ⁹⁹ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 20.
- ¹⁰⁰ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 21.
- ¹⁰¹ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 22.
- ¹⁰² Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 23.
- ¹⁰³ Article 169.1(2) and 169.1(3) of the CDA.
- ¹⁰⁴ EMIR, Art. 35(1).
- ¹⁰⁵ EMIR, Art. 35(2).
- ¹⁰⁶ Article 156-2 of the FIEA.
- ¹⁰⁷ EMIR, Art. 36(1).
- ¹⁰⁸ EMIR, Art. 36(1) and (2).
- ¹⁰⁹ Article 174.1 of the CDA.
- ¹¹⁰ Article 177 of the CDA.
- ¹¹¹ EMIR, Art. 37(1).
- ¹¹² EMIR, Art. 37(3).
- ¹¹³ EMIR, Art. 37(4) and (5).
- ¹¹⁴ EMIR, Art. 37(6).
- ¹¹⁵ EMIR, Art. 37(2).
- ¹¹⁶ Article 174.1 of the CDA.
- ¹¹⁷ Article 177 of the CDA.
- ¹¹⁸ EMIR, Art. 38(1).
- ¹¹⁹ EMIR, Art. 38(3) to (5).
- ¹²⁰ EMIR, Art. 38(1).
- ¹²¹ EMIR, Art. 38(2).
- ¹²² EMIR, Art. 38(1) and (3).
- ¹²³ Article 174.1 of the CDA.
- ¹²⁴ EMIR, Art. 39(1) to (3).
- ¹²⁵ EMIR, Art. 39(4) to (6).
- ¹²⁶ EMIR, Art. 39(7).
- ¹²⁷ EMIR, Art. 39(8).
- ¹²⁸ EMIR, Art. 39(9).
- ¹²⁹ EMIR, Art. 39(10).
- ¹³⁰ Articles 179.5 and 103.4 of the CDA.

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- ¹³¹ Article 175.2(7) of the CDA and Article 71(5) of the Enforcement Ordaninces.
¹³² EMIR, Art. 40(1).
¹³³ Article 175.2(5) and (7) of the CDA and Article 71(5) of the Enforcement Ordinance.
¹³⁴ Article 169.1(2) and (3) of the CDA.
¹³⁵ EMIR, Art. 41(1).
¹³⁶ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Recital 21.
¹³⁷ EMIR, Art. 41(1).
¹³⁸ EMIR, Art. 41(2).
¹³⁹ EMIR, Art. 41(3) and (4).
¹⁴⁰ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 24(1).
¹⁴¹ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 24(1).
¹⁴² Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 24(2).
¹⁴³ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 24(4).
¹⁴⁴ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 25.
¹⁴⁵ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 26(1).
¹⁴⁶ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 26(4).
¹⁴⁷ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 27.
¹⁴⁸ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 28.
¹⁴⁹ Article 175.2(5) and (7) of the CDA and Article 71(5) of the Enforcement Ordinance..
¹⁵⁰ Article 169.1(2) and (3) of the CDA.
¹⁵¹ Articles 179.1 of the CDA.
¹⁵² Article 175.2(5) and (7) of the CDA and Article 71(5) of the Enforcement Ordinance..
¹⁵³ Article 175.2(5) and (7) of the CDA and Article 71(5) of the Enforcement Ordinance..
¹⁵⁴ Article 175.2(5) and (7) of the CDA and Article 71(5) of the Enforcement Ordinance..
¹⁵⁵ Article 175.2(5) and (7) of the CDA and Article 71(5) of the Enforcement Ordinance..
¹⁵⁶ Article 175.2(5) and (7) of the CDA and Article 71(5) of the Enforcement Ordinance..
¹⁵⁷ EMIR, Art. 42(1) and (2).
¹⁵⁸ EMIR, Art. 42(3).
¹⁵⁹ EMIR, Art. 42(4).
¹⁶⁰ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 29.
¹⁶¹ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 30.
¹⁶² Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 31.
¹⁶³ Article 175.2(5) and (7) of the CDA and Article 71(5) of the Enforcement Ordinance..
¹⁶⁴ Article 169.1(2) and (3) of the CDA.
¹⁶⁵ Article 175.2(5) and (7) of the CDA and Article 71(5) of the Enforcement Ordinance..
¹⁶⁶ Article 175.2(5) and (7) of the CDA and Article 71(5) of the Enforcement Ordinance..
¹⁶⁷ Article 175.2(5) and (7) of the CDA and Article 71(5) of the Enforcement Ordinance..
¹⁶⁸ EMIR, Art. 43.
¹⁶⁹ EMIR, Art. 43(3).
¹⁷⁰ Article 175.2(5) and (7) of the CDA and Article 71(5) of the Enforcement Ordinance..
¹⁷¹ Article 169.1(2) and (3) of the CDA.
¹⁷² EMIR, Art. 44(1).
¹⁷³ EMIR, Art. 44 (1).
¹⁷⁴ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 32.
¹⁷⁵ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 33.
¹⁷⁶ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 34.
¹⁷⁷ Article 175.2(5) and (7) of the CDA and Article 71(5) of the Enforcement Ordinance..
¹⁷⁸ Article 169.1(2) and (3) of the CDA.
¹⁷⁹ Article 175.2(5) and (7) of the CDA and Article 71(5) of the Enforcement Ordinance..
¹⁸⁰ Article 175.2(5) and (7) of the CDA and Article 71(5) of the Enforcement Ordinance..
¹⁸¹ Article 175.2(5) and (7) of the CDA and Article 71(5) of the Enforcement Ordinance..
¹⁸² EMIR, Art. 45(1) to (4).
¹⁸³ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 35.
¹⁸⁴ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 36.
¹⁸⁵ Article 175.2(5) and (7) of the CDA and Article 71(5) of the Enforcement Ordinance..
¹⁸⁶ Article 169.1(2) of the CDA.
¹⁸⁷ Articles 180.2 and 180.3 of the CDA.
¹⁸⁸ Article 175.2(5) and (7) of the CDA and Article 71(5) of the Enforcement Ordinance..
¹⁸⁹ Article 175.2(5) and (7) of the CDA and Article 71(5) of the Enforcement Ordinance..
¹⁹⁰ EMIR, Art. 46(1).
¹⁹¹ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 37 and 42.
¹⁹² Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 38.
¹⁹³ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 39 to 41.
¹⁹⁴ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 43.
¹⁹⁵ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 44.
¹⁹⁶ Article 175.2(5) and (7) of the CDA and Article 71(5) of the Enforcement Ordinance..
¹⁹⁷ Article 169.1(2) of the CDA.
¹⁹⁸ Articles 179.1 of the CDA.

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- ¹⁹⁹ Articles 179.6, 103.5, 103.6, 101.3 and 101.4 of the CDA and Article 39 of the Enforcement Ordinance.
- ²⁰⁰ Articles 179.6, 103.5, 103.6, 101.3 and 101.4 of the CDA and Article 39 of the Enforcement Ordinance.
- ²⁰¹ Articles 179.6, 103.5, 103.6, 101.3 and 101.4 of the CDA and Article 39 of the Enforcement Ordinance.
- ²⁰² Articles 179.6, 103.5, 103.6, 101.3 and 101.4 of the CDA and Article 39 of the Enforcement Ordinance.
- ²⁰³ Article 175.2(5) and (7) of the CDA and Article 71(5) of the Enforcement Ordinance.
- ²⁰⁴ EMIR, Art. 47(6).
- ²⁰⁵ EMIR, Art. 47(1); Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 45.
- ²⁰⁶ EMIR, Art. 47(3); Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 46.
- ²⁰⁷ EMIR, Art. 47(4); Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 47.
- ²⁰⁸ EMIR, Art. 47(5).
- ²⁰⁹ 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.
- ²¹⁰ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art 48.
- ²¹¹ Article 175.2(5) of the CDA.
- ²¹² Article 169.1(2) of the CDA.
- ²¹³ Article 179.5 and 103.4 of the CDA and Article 74.2 of the Enforcement Ordinance in respect of margin. Article 180.5 and 110 of the CDA and Article 46 of the Enforcement Ordinance in respect of default fund contributions.
- ²¹⁴ Article 175.2(5) of the CDA.
- ²¹⁵ Article 175.2(5) of the CDA.
- ²¹⁶ Article 175.2(7) of the CDA and Article 71(5) of the Enforcement Ordinances.
- ²¹⁷ Article 179.5 and 103.4 of the CDA and Article 74.2 of the Enforcement Ordinance in respect of margin. Article 180.5 and 110 of the CDA and Article 46 of the Enforcement Ordinance in respect of default fund contributions.
- ²¹⁸ Article 175.2(5) of the CDA.
- ²¹⁹ Articles 175.2(7) of the CDA and Articles 71(5) and 71(6) of the Enforcement Ordinances.
- ²²⁰ Article 175.2(5) of the CDA.
- ²²¹ EMIR, Art. 48(1).
- ²²² EMIR, Art. 48(2).
- ²²³ EMIR, Art. 48(3).
- ²²⁴ EMIR, Art. 48(4).
- ²²⁵ EMIR, Art. 48(5).
- ²²⁶ EMIR, Art. 48(6).
- ²²⁷ EMIR, Art. 48(7).
- ²²⁸ Article 175.2(5) and (7) of the CDA and Article 71(5) of the Enforcement Ordinance.
- ²²⁹ Article 169.1(2) of the CDA.
- ²³⁰ Articles 180.2 and 180.3 of the CDA.
- ²³¹ Article 181 of the CDA.
- ²³² EMIR, Art. 49(1); Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 50 and 51.
- ²³³ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 52.
- ²³⁴ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 53.
- ²³⁵ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 56 and 57.
- ²³⁶ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 58.
- ²³⁷ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 59.
- ²³⁸ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 60.
- ²³⁹ EMIR, Art. 49(2); Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 61.
- ²⁴⁰ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 62.
- ²⁴¹ EMIR, Art. 49(3); Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 64.
- ²⁴² Article 169.1(2) of the CDA.
- ²⁴³ Article 175.2(5) and (7) of the CDA and Article 71(5) of the Enforcement Ordinance.
- ²⁴⁴ Article 175.2(5) and (7) of the CDA and Article 71(5) of the Enforcement Ordinance.
- ²⁴⁵ Article 175.2(5) and (7) of the CDA and Article 71(5) of the Enforcement Ordinance.
- ²⁴⁶ Article 175.2(5) and (7) of the CDA and Article 71(5) of the Enforcement Ordinance.
- ²⁴⁷ Article 175.2(5) and (7) of the CDA and Article 71(5) of the Enforcement Ordinance.
- ²⁴⁸ Article 175.2(5) and (7) of the CDA and Article 71(5) of the Enforcement Ordinance.
- ²⁴⁹ Article 175.2(5) and (7) of the CDA and Article 71(5) of the Enforcement Ordinance.
- ²⁵⁰ Article 175.2(5) and (7) of the CDA and Article 71(5) of the Enforcement Ordinance.
- ²⁵¹ Article 175.2(5) and (7) of the CDA and Article 71(5) of the Enforcement Ordinance.
- ²⁵² EMIR, Art. 50(1).
- ²⁵³ EMIR, Art. 50(2) and (3).
- ²⁵⁴ 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.