



Commissioner Mairead McGuinness,
Directorate-General for Financial Stability, Financial Services and Capital Markets,
European Commission,
1049 Bruxelles / Brussels,
Belgium

22 March 2022

Dear Commissioner McGuinness,

Equivalence and Recognition of non-EU central counterparties (CCPs) under EMIR and CRR

The Joint Associations¹ are appreciative of the work carried out by the European Commission so far in assessing non-EU jurisdictions for equivalence in accordance with Regulation (EU) No 648/2012 (EMIR)². However, we note that to date only 16 jurisdictions have been determined to be equivalent³.

The absence of equivalence decisions for a wider range of jurisdictions means that EU firms and their clients are facing a significant increase in the cost of clearing as well as potential significant loss of business from summer 2022.

EU firms that are members of non-EU CCPs (e.g., via non-EU branches) or that have non-EU subsidiaries that are members of non-EU CCPs need to rely on the temporary transitional provisions in CRR⁴ which provide that until 28 June 2022 they may treat exposures to that non-EU CCP as if they were exposures to a QCCP⁵. Indicative feedback from ISDA

¹ The Joint Associations are ISDA, FIA, EBF, EFAMA and AFME. Information on each association is set out in Annex I to this letter.

² <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32020D1308&from=EN>

³ Australia, Brazil, Canada, DIFC, Hong Kong, India, Japan, Mexico, New Zealand, Singapore, South Africa, South Korea, Switzerland, UAE, UK, USA.

⁴ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02013R0575-20210930>

⁵ Qualifying CCP

members shows that, if this transitional relief was no longer available, capital requirements for EU firms' subsidiaries' exposures to affected non-EU CCPs could increase by such a prohibitively significant extent (by EUR 92bn across 6 large banks that provided data to ISDA) that it would make clearing at those CCPs unviable for EU firms. This would result in EU firms losing business as a result of the additional capital requirements. For EU firms that access non-EU CCPs through their non-EU branches this would mean a loss of access to any non-qualifying non-EU CCP.

The Joint Associations ask the Commission to expedite its review of the clearing arrangements in as many non-EU jurisdictions as possible and also to provide a public update on progress with this review, including confirmation of the jurisdictions currently under review and any for which the Commission considers equivalence will not be possible by the end of the current temporary transitional period.

If the Commission does not expect to be able to grant equivalence to many more jurisdictions by 28 June 2022, we ask the Commission to take urgent action to allow for an additional phase-in period once the current transitional treatment of non-EU CCPs as QCCPs under CRR expires, and to coordinate with the ECB and national competent authorities for banking supervision to ensure appropriate management of any capital impacts.

We note that even once the Commission has granted equivalence, the European Securities and Markets Authority (ESMA) still has to make a recognition decision in relation to each non-EU CCP (before 28 June 2022), which adds to the timeline pressure for EU clearing members of these CCPs. In some cases, ESMA also still has to agree memoranda of understanding with non-EU authorities. Therefore, clarity is urgently needed. For example, even where jurisdictions have already been declared equivalent (e.g., in the case of the US, which was first determined to be equivalent in March 2016 with respect to CFTC supervised CCPs and again in January 2021 with respect to SEC supervised CCPs) there are still CCPs from those jurisdictions whose applications for recognition are pending. We would also welcome the Commission requesting ESMA to frontload their work on recognition so that these recognition decisions can be made as soon as equivalence is available.

1. CCP equivalence and QCCP status under CRR

The Joint Associations ask the Commission to provide an extension mechanism for unrecognised non-EU CCPs to qualify as QCCPs under Article 497(1) CRR. Currently, EU firms may treat a non-EU CCP from a non-equivalent jurisdiction as a QCCP for the purposes of CRR until **28 June 2022**⁶ where no equivalence decision is adopted prior to that date and where the CCP submitted its recognition application to ESMA before 27 June 2019.

When the Commission extended this transitional period in 2021, it noted that CCPs in jurisdictions including Argentina, Chile, China, Colombia, Indonesia, Israel, Malaysia,

⁶ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32021R1043>

Taiwan, Thailand and Turkey benefited from the transitional regime, as the Commission had not yet adopted equivalence decisions for these jurisdictions. These jurisdictions are important trading partners of the EU and important markets for EU financial institutions. The Commission also noted that it would continue its work on equivalence decisions, although the outcome of those assessments could not be guaranteed.

However, it remains the case that the Commission has not yet adopted equivalence decisions for these jurisdictions (or any additional jurisdictions) or formally confirmed that it does not intend to adopt such an equivalence decision. We also note that in some jurisdictions (e.g., very small or closed jurisdictions such as those employing currency or capital controls⁷) it may not be appropriate or efficient to apply a clearing obligation locally, and such jurisdictions may never adopt a clearing obligation. As a result, EU members of CCPs in the countries listed above continue to benefit from the transitional regime, as do EU firms with non-EU subsidiaries that are members of CCPs in those jurisdictions.

If equivalence decisions are not adopted, or the transitional regime is not extended, those EU firms will be required to increase their own funds for exposures to those CCPs significantly or lose membership completely if they access these non-EU CCPs via non-EU branches. As recognised by the Commission in recital 4 of the implementing regulation that extended the transitional regime until June 2022, this will most likely lead to the withdrawal of those institutions as direct participants in those CCPs or, at least temporarily, to the cessation of the provision of clearing services to those institutions' clients, potentially causing severe disruption in the markets in which those CCPs operate.

In particular, EU clearing members would no longer be able to offer access to the full range of major international CCPs that their EU and non-EU clients expect from any globally active clearing member. For example, the offering of clearing services on major non-EU CCPs by an EU clearing member or its subsidiary will become unviable, with consequences for their other client clearing business as well⁸.

Global clients expect any globally active clearing member to be able to offer access to the major international CCPs, and an EU clearing member / its subsidiary will no longer be able to offer this. This is likely to result in EU clearing members / their subsidiaries losing clients also for their other clearing services offering (for CCPs in other jurisdictions), and also most probably losing both EU and non-EU clients.

This would create an unlevel playing field in clearing at CCPs in these jurisdictions. These capital multipliers under CRR would be applicable only to EU clearing members/their subsidiaries, but not to other third-country clearing members or clearing members in the home jurisdiction of the CCP. As a result, EU clients and non-EU clients would have to

⁷ See further discussion of this issue in the paper at the following link: <https://www.isda.org/a/tsvEE/ITC-Small-Jurisdictions-final.pdf>

⁸ Continued access to the US CCPs in particular is of critical importance to EU clearing members and their EU clients.

appoint non-EU clearing members if they still wanted to transact in the markets that these non-EU CCPs serve. For an EU client with a non-EU clearing member, the capital requirements of transactions cleared by a CCP in a non-equivalent jurisdiction would also increase if the EU client is itself subject to capital requirements.

In order to avoid this disruption, we would ask the Commission to expedite equivalence decisions for as many jurisdictions as possible, well before 28 June 2022 in order to allow ESMA to make its recognition decisions. If it will not be possible to grant equivalence for many additional jurisdictions, then we ask the Commission to take urgent action to enable EU clearing members and their subsidiaries to continue to access unrecognised non-EU CCPs.

We are also aware of issues regarding non-EU CCPs where an equivalence decision for their jurisdiction exists but ESMA is not currently able to grant recognition due to required changes to the relevant equivalence decisions. We would urge the Commission to take urgent action on these areas as well.

2. Impact Quantification

Five large European banks have shared with ISDA data on the expected impact on risk weighted assets (**RWA**) if the Commission neither grants equivalence in relation to key jurisdictions nor provides for any additional transitional period or phase-in.

We show these RWA increases in three categories:

- CCPs that have not been recognised yet (e.g., Takasbank, Shanghai Clearing House, Bursa Malaysia, Taiwan Futures Exchange Corporation, Comder, National Clearing Centre),
- CCPs supervised by the US Securities Exchange Commission (the Fixed Income Clearing Corporation and the Options Clearing Corporation),
- CCPs that might be de-recognised following ESMA's current review (e.g., Indian CCPs).

| No | Category | RWA qualifying | RWA non-qualifying | Difference |
|----|--|----------------|--------------------|---------------|
| 1. | CCPs that have not been recognised yet | 281 | 3,428 | 3,147 |
| 2. | CCPs supervised by SEC | 1,429 | 86,163 | |
| 3. | CCPs that might be de-recognised following ESMA's current review | 41 | 4,645 | 4,604 |
| | Sum | 1,751 | 94,235 | 92,484 |

RWA numbers in EUR millions.

We thank you for taking the time to consider our views on this issue. The Joint Associations will continue to work with the Commission and other EU authorities to achieve the least disruptive outcomes for EU capital markets, but if you have questions on any of the issues addressed in this letter, we are happy to discuss them with you at your convenience.

Yours sincerely,

Adam Farkas
Chief Executive Officer
AFME

Wim Mijs
Chief Executive Officer
EBF

Tanguy van de Werve
Director General
EFAMA

Walt Lukken,
President and CEO
FIA

Scott O'Malia,
Chief Executive Officer
ISDA

Annex I

Information about the signatory organisations

About AFME:

The Association for Financial Markets in Europe (AFME) is the voice of all Europe's wholesale financial markets, providing expertise across a broad range of regulatory and capital markets issues. We represent the leading global and European banks and other significant capital market players. We advocate for deep and integrated European capital markets which serve the needs of companies and investors, supporting economic growth and benefiting society. We aim to act as a bridge between market participants and policy makers across Europe, drawing on our strong and long-standing relationships, our technical knowledge and fact-based work.

About EBF:

The European Banking Federation is the voice of the European banking sector, bringing together 32 national banking associations in Europe that together represent a significant majority of all banking assets in Europe, with 3,500 banks - large and small, wholesale and retail, local and international – while employing approximately two million people. EBF members represent banks that make available loans to the European economy in excess of €20 trillion and that reliably handle more than 400 million payment transactions per day. Launched in 1960, the EBF is committed to a single market for financial services in the European Union and to supporting policies that foster economic growth.

About EFAMA:

EFAMA, the voice of the European investment management industry, represents 28 Member Associations, 57 Corporate Members and 23 Associate Members. At end Q4 2020, total net assets of European investment funds reached EUR 18.8 trillion. These assets were managed by more than 34,350 UCITS (Undertakings for Collective Investments in Transferable Securities) and almost 29,650 AIFs (Alternative Investment Funds). At the end of Q2 2020, assets managed by European asset managers as investment funds and discretionary mandates amounted to an estimated EUR 24.9 trillion. More information is available at www.efama.org

About FIA:

FIA is the leading global trade organization for the futures, options and centrally cleared derivatives markets, with offices in London, Singapore and Washington, D.C. FIA's membership includes clearing firms, exchanges, clearinghouses, trading firms and commodities specialists from more than 48 countries as well as technology vendors, lawyers and other professionals serving the industry.

FIA's mission is to:

- support open, transparent and competitive markets,
- protect and enhance the integrity of the financial system, and
- promote high standards of professional conduct.

As the leading global trade association for the futures, options and centrally cleared derivatives markets, FIA represents all sectors of the industry, including clearing firms,

exchanges, clearing houses, trading firms and commodities specialists from more than 48 countries, as well as technology vendors, lawyers and other professionals serving the industry.

About ISDA:

Since 1985, ISDA has worked to make the global derivatives markets safer and more efficient. Today, ISDA has more than 970 member institutions from 77 countries. These members comprise a broad range of derivatives market participants, including corporations, investment managers, government and supranational entities, insurance companies, energy and commodities firms, and international and regional banks. In addition to market participants, members also include key components of the derivatives market infrastructure, such as exchanges, intermediaries, clearing houses and repositories, as well as law firms, accounting firms and other service providers. Information about ISDA and its activities is available on the Association's website: www.isda.org. Follow us on [Twitter](#).