



European Securities and
Markets Authority

The Chair

Date: 2 September 2013
ESMA/2013/1163

**Jonathan Faull
Director General,
Internal Market and
Services
European Commission
Rue de Spa 2
B-1049 Brussels
Belgium**

Re: Technical advice on third country regulatory equivalence under EMIR

Dear Jonathan,

On 11th October 2012, you sent a formal request for technical advice on the equivalence between certain third country legal and supervisory frameworks in respect of EMIR. This request was subsequently amended to revise the list of countries to be considered, to change the scope of ESMA's advice in respect of some countries and to extend the deadlines for ESMA to deliver its technical advice.

The deadline for the delivery of the first phase of ESMA's technical advice, that being our advice in respect of the US and Japan, was the 1st September 2013. With this letter I am pleased to enclose ESMA's advice for the US and Japan. For the US this includes technical advice regarding CCP requirements, trade repository requirements and requirements for the clearing obligation, reporting obligation, non-financial counterparties and risk mitigation techniques for uncleared trades. For Japan this includes technical advice regarding CCP requirements and requirements for the clearing obligation, non-financial counterparties and risk mitigation techniques for uncleared trades.

In respect of ESMA's technical advice regarding the Japanese regime for trade repositories, 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 has a mandate to provide the Commission with technical advice on the equivalence of the legal and supervisory framework of Japan for trade repositories, ESMA considers that it would not be appropriate to issue a technical advice when there is currently no need for such an advice. ESMA considers that it would be more advantageous to postpone the delivery of its technical advice regarding trade repositories for Japan until such time as a trade repository from Japan actually intends to apply for recognition under EMIR.

The deadline for the delivery of the second phase of ESMA's technical advice, that being our advice in respect of Australia, Hong Kong, India, Singapore, South Korea and Switzerland, is the 1st of October 2013.



However, given that applications for recognition from third country CCPs are due to be made to ESMA by 15 September 2013, ESMA considers that its advice on the equivalence of the legal and supervisory framework for CCPs in these phase two jurisdictions should be presented to the Commission as soon as possible. With this letter I am therefore also pleased to enclose ESMA's advice in respect of CCP requirements for Australia, Hong Kong, Singapore and Switzerland. ESMA is still in the process of preparing its technical advice regarding trade repository requirements and requirements for the clearing obligation, reporting obligation, non-financial counterparties and risk mitigation techniques for uncleared trades in respect of these phase two jurisdictions and that advice will be delivered at a later date.

At this stage ESMA is not delivering its technical advice regarding CCP requirements in respect of India or South Korea and its technical advice regarding the requirements for the clearing obligation, reporting obligation, non-financial counterparties and risk mitigation techniques for uncleared trades in respect of Canada. In the case of South Korea this jurisdiction was added to ESMA's mandate in June and work is still underway to complete this advice. In respect of India there are multiple regimes to be considered, depending on the type of product cleared by the CCP in question, and work is also still underway to complete this advice. Canada is still in the process of finalising its regime for the clearing obligation, reporting obligation, non-financial counterparties and risk mitigation techniques for uncleared trades and work is also still underway to complete this advice.

We look forward to continuing to work with you as we complete this important work.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'S/M' with a flourish.

Steven Maijoor
Chair
European Securities and Markets Authority

Cc: S. Bowles, W. Langen, K. Swinburne, L. Domenici, S. Giegold, Council Secretariat, P. Pearson