

PRESS RELEASE

ESMA finalises clearing and risk mitigation obligations for non-EU OTC derivatives

The European Securities and Markets Authority (ESMA) has issued [final](#) draft regulatory technical standards (RTS) related to derivative transactions by non-European Union (EU) counterparties. The RTS implement provisions of the Regulation on OTC derivatives, central counterparties and trade repositories (EMIR).

EMIR provisions regarding central clearing and risk mitigation techniques also apply to those OTC derivatives entered into by two non-EU counterparties which have a direct, substantial and foreseeable impact on EU financial markets. Ensuring that risks posed to the EU's financial markets by non-EU transactions are addressed by regulation and supervision is key in ensuring safer markets.

ESMA's draft RTS clarify that OTC derivative contracts entered into by two counterparties established in one or more non-EU countries, for which a decision on equivalence of the jurisdiction's regulatory regime has not been adopted, will be subject to EMIR where one of the following conditions are met:

- One of the two non-EU counterparties to the OTC derivative contract is guaranteed by an EU financial for a total gross notional amount of at least €8bn, and for an amount of at least 5% of the OTC derivatives exposures of the EU financial guarantor; or
- The two non-EU counterparties execute their transactions via their EU branches and would qualify as financial counterparty if established in the EU.

ESMA's draft RTS will cover OTC derivative contracts concluded after the date the RTS becomes applicable.

Non-evasion clause

The draft RTS also specify cases of transactions aimed at evading EMIR's regulatory



requirements, which would be the case for derivatives contracts or arrangements concluded without any business substance or economic justification, and in a way to circumvent the clearing obligation and risk mitigation provisions.

Next steps

ESMA's draft RTS have been submitted for endorsement to the European Commission on 15 November 2013. The Commission has three months to decide whether to endorse the final draft RTS and must then submit the endorsed RTS to the European Parliament and the Council.



Notes for editors

1. [2013/1657 - Draft technical standards under EMIR on contracts with a direct, substantial and foreseeable effect within the Union and non-evasion.](#)
2. [Regulation \(EU\) No.648/2012 on OTC derivatives, central counterparties and trade repositories.](#)
3. ESMA is an independent EU Authority that was established on 1 January 2011 and works closely with the other European Supervisory Authorities responsible for banking (EBA), and insurance and occupational pensions (EIOPA), and the European Systemic Risk Board (ESRB).
4. ESMA's mission is to enhance the protection of investors and promote stable and well-functioning financial markets in the European Union (EU). As an independent institution, ESMA achieves this aim by building a single rule book for EU financial markets and ensuring its consistent application across the EU. ESMA contributes to the regulation of financial services firms with a pan-European reach, either through direct supervision or through the active co-ordination of national supervisory activity.

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