

PRESS RELEASE

ESMA consults on non-EU counterparties OTC derivatives

The European Securities and Markets Authority (ESMA) has launched a [consultation](#) on draft regulatory technical standards (RTS) aimed at implementing the provisions of the European Markets Infrastructure Regulation (EMIR) related to OTC derivative transactions by non-European Union (EU) counterparties in certain cases, and aimed at preventing attempts by non-EU counterparties to evade EMIR's provisions.

The Consultation Paper clarifies the conditions where EMIR's provisions regarding central clearing or risk mitigation techniques would apply to OTC derivatives by two non-EU counterparties which have a direct, substantial and foreseeable effect in the EU. The proposed RTS would only apply when two counterparties to the same transaction are established outside the EU, their jurisdictions' rules are not considered equivalent to EMIR, and where one of the following conditions are met:

- one of the two non-EU counterparties is guaranteed by an EU financial counterparty for at least €8bn of the gross notional amount of OTC derivatives entered into and for an amount of at least 5% of the OTC derivatives exposures of the EU financial counterparty; or
- the two non-EU counterparties execute their transactions via their EU branches.

Steven Maijoor, ESMA Chair, said:

Today's proposals aim at ensuring that non-EU counterparties whose derivatives deals have a direct and substantial impact on EU financial markets are subject to EMIR's clearing obligation or risk mitigation requirements. This is key in ensuring that any risk posed to the EU's financial markets by non-EU counterparties' transactions is adequately managed, thereby reducing any potential financial stability risks."

The provisions in the draft RTS included in the consultation paper also aim at preventing the



evasion of the regulatory requirements, such as would be the case if derivatives contracts between non-EU counterparties were being concluded without any business substance or economic justification, and in a way to evade the clearing obligation and risk mitigation provisions.

Next steps

The closing date for stakeholders' feedback on the draft RTS is 16 September 2013.



Notes for editors

1. [2013/892 Consultation Paper – Draft Regulatory Technical Standards on contracts having a direct, substantial and foreseeable effect within the Union and non-evasion of provisions of EMIR](#)
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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