



European Securities and  
Markets Authority

## **Supplement to the Final report**

**Technical advice on third country regulatory equivalence under EMIR – Hong Kong**



## Introduction

1. The European Commission mandated ESMA on 11 October 2012 to provide it with technical advice on the equivalence between the Hong Kong 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)<sup>1</sup>. 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; 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 Hong Kong regulatory regime and the EU regulatory regime under EMIR in respect of the recognition of third country CCPs was included in the September Final report (ESMA/2013/1159 of 1 September 2013).
4. This supplement to the September final report relates to 1) 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 and 2) the recognition of third country TRs.

## Section I. Potential duplicative or conflicting requirements

5. **Given that Hong Kong is still in the process of finalising its regulatory regime for the clearing obligation, non-financial counterparties and risk mitigation techniques for uncleared trades, to date, ESMA is not in a position to perform a conclusive analysis and deliver a technical advice on this topic.**
6. **ESMA stands ready to receive a new mandate from the Commission in order to provide a technical advice when progress will have been made for the adoption of the relevant Hong Kong regulatory regime.**

## Section II. Trade Repositories

7. In order for a TR authorised in a third country to provide reporting services to entities established in the EU, it must be recognised by ESMA. Such recognition requires that the legal and supervisory regime of the country of the TR is determined equivalent to that of EMIR.
8. Given that Hong Kong is still in the process of finalising its regulatory regime for reporting to TRs, to date, ESMA is not in a position to perform a conclusive analysis and to deliver a technical advice on this topic.

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<sup>1</sup> Hereafter the Regulation or EMIR.



9. It should be noted that the absence of an equivalence assessment on trade repositories does not prevent the access of Hong Kong counterparties to EU-based TRs authorised by ESMA. It also does not prevent a Hong Kong branch of an EU entity to report to a Hong Kong TR if so required by any other applicable law than EMIR.
10. **Therefore this report does not contain ESMA's advice in respect of Hong Kong under Article 75(1) of EMIR nor on the reporting obligation under EMIR. Should the circumstances change, ESMA stands ready to receive a new mandate from the Commission in order to provide a technical advice.**