



Sir Jon Cunliffe

Deputy Governor Financial Stability

20 December 2017

Dear Chief Executive Officer,

1. A number of non-UK Central Counterparties (CCPs) provide services in the UK. Non-UK CCPs are able to provide services in the UK if they have been authorised or recognised in the European Union (EU) under the European Market Infrastructure Regulation (EMIR). I am writing to you now to set out how we envisage non-UK CCPs will be recognised to provide services in the UK once the UK has withdrawn from the EU.
2. When the UK leaves the EU, recognition of non-UK CCPs so that they can continue to operate in the UK will become the responsibility of UK, rather than EU, authorities. The Government announced today that it intends to give the Bank of England new powers under UK law to recognise non-UK CCPs. UK market participants who use non-UK CCPs need to know ahead of the UK's withdrawal from the EU whether those CCPs will continue to operate in the UK, so that they can plan accordingly. We are therefore undertaking preparatory work with a view to ensuring a smooth and transparent process.
3. The recent European Council meeting on 14-15 December 2017 yielded welcome positive results including agreement of the need to negotiate an implementation period during which non-UK CCPs could be able to provide services in the UK in much the same way as today. We therefore expect those negotiations to progress early in the New Year. In the meantime, it is prudent for non-UK CCPs to engage with us in early 2018 on preparatory work for recognition within the UK, and we will then review timelines and assumptions as the political process moves forward.
4. We have identified your CCP as one which is either currently recognised by ESMA to operate in the EU or that has applied to ESMA for recognition, and we therefore need to understand whether you plan to continue operating in the UK.

Does your CCP need UK recognition post-EU withdrawal?

5. We expect a non-UK CCP will need to apply for UK recognition if it intends to do any of the following after the UK's withdrawal from the EU:
 - i. provide clearing services to clearing members or trading venues established in the UK;
 - ii. be used by market participants to satisfy any mandatory clearing obligations that apply under UK domestic law; or
 - iii. be deemed a 'Qualifying CCP' under UK domestic law for certain capital requirements purposes.

What will the UK's recognition regime for CCPs be post-EU withdrawal?

6. There is currently no UK domestic regime for the recognition of non-UK CCPs in the UK (as recognition is the responsibility of EU authorities). The UK Government has made clear that, at the point of the UK's withdrawal from the EU, it intends to convert existing EU law into UK domestic law. However we recognise that the EU law in this area, EMIR, is currently under review following legislative proposals from the European Commission. The substance and timing of any amendments to EMIR have not yet been finalised. Given the need for market participants to plan, the Bank will therefore undertake the preparatory work referred to in this letter on the basis of the current European legislative framework.
7. Under the current framework Article 25 of EMIR sets out the application process and criteria for third-country CCPs wishing to be recognised in the EU. We anticipate that the UK Government will propose that, immediately following the UK's withdrawal from the EU, UK domestic law requirements for recognition of non-UK CCPs will in essence be the same as the current requirements under Article 25 of EMIR.
8. Our objective, in using Article 25, is to give certainty to non-UK CCPs and their users for the period immediately following EU withdrawal. The intention is that if the relevant criteria under Article 25 are satisfied a non-UK CCP will be recognised and able to operate in the UK without discontinuity of service. In due course, following the UK's withdrawal from the EU, and in light of developments internationally, the Bank intends to review this framework.
9. The Bank also welcomes the Government's announcement today regarding its intention to provide the means to the Bank, should it consider it necessary, to create a temporary regime for non-UK CCPs. The Bank encourages non-UK CCPs to begin preparing for recognition in line with the approach set out today, and will consider use of the temporary regime only as a fall-back.

What do you need to do?

10. We encourage non-UK CCPs to begin engaging with the Bank for pre-application discussions by replying to this letter stating whether you intend to seek recognised CCP status in the UK following the UK's withdrawal from the EU. Please also inform us if your firm undertakes any non-exempt regulated activities that would require Part 4A permission under the UK Financial Services and Markets Act 2000. We encourage you to notify us of this information as soon as possible, as the sooner we receive a response on this point the earlier we can begin our preparatory work.
11. As noted above, we expect recognition of non-UK CCPs immediately following the UK's withdrawal from the EU will be based on criteria that reflects Article 25(2) of EMIR¹. This would include an assessment of the equivalence of your jurisdiction's legal and supervisory framework to that of the UK. Our presumption is that, given the EU regime currently applies in the UK, jurisdictions that have already been assessed as equivalent by the EU will be found equivalent.

¹ These criteria are listed in an annex to this letter.

We are separately writing to the domestic supervisory authority in your jurisdiction to advise them on the process for this, should you choose to apply for recognition.

12. A non-UK CCP seeking to be recognised in the UK will therefore need to provide us with information required under UK domestic law that is expected to be in essence the same as the list of items currently required under EU law² (non-EU CCPs currently recognised in the EU may provide the information they previously provided to ESMA, updated as necessary). We anticipate, subject to this information, that non-UK CCPs currently either recognised or authorised to operate in the UK will be recognised to operate here after the UK withdraws from the EU. To this end we would ask that, should you wish to continue to operate in the UK, you engage with us early in the New Year.
13. The Bank stands ready to provide assistance if you have any questions. Please direct your responses to the requests above, and any other enquiries to FMI-Enquiries@bankofengland.co.uk along with a contact name and details for further discussions.

Yours sincerely,



Sir Jon Cunliffe
Deputy Governor Financial Stability

² These items are listed in an annex to this letter.

ANNEX

1. Criteria for a CCP to be recognised in the EU (EMIR Article 25(2))

ESMA, after consulting the authorities referred to in paragraph 3, may recognise a CCP established in a third country that has applied for recognition to provide certain clearing services or activities where:

- (a) the Commission has adopted an implementing act in accordance with paragraph 6;
- (b) the CCP is authorised in the relevant third country, and is subject to effective supervision and enforcement ensuring full compliance with the prudential requirements applicable in that third country;
- (c) cooperation arrangements have been established pursuant to paragraph 7;
- (d) the CCP is established or authorised in a third country that is considered as having equivalent systems for anti-money- laundering and combating the financing of terrorism to those of the Union in accordance with the criteria set out in the common understanding between Member States on third-country equivalence under Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing.

2. Information required in a CCP recognition application (Delegated Regulation 153/2013 Article 2)

An application for recognition submitted by a CCP established in a third country shall contain at least the following information:

- (a) full name of the legal entity;
- (b) identities of the shareholders or members with qualifying holdings;
- (c) a list of the Member States in which it intends to provide services;
- (d) classes of financial instruments cleared;
- (e) details to be included in the ESMA website in accordance with Article 88(1)(e) of Regulation (EU) No 648/2012;
- (f) details of its financial resources, the form and methods in which they are maintained and the arrangements to secure them including default management procedures;
- (g) details on the margin methodology and for the calculation of the default fund;
- (h) a list of the eligible collateral;
- (i) a breakdown of values, in prospective form if needed, cleared by the applying CCP by each Union currency cleared;
- (j) results of the stress tests and back tests performed during the year preceding the date of application;
- (k) its rules and internal procedures with evidences of full compliance with the requirements applicable in that third country;
- (l) details of any outsourcing arrangements;
- (m) details on segregation arrangements and respective legal soundness and enforceability;
- (n) details on the CCP's access requirements and terms for suspension and termination of membership;
- (o) details of any interoperability arrangement, including the information provided to the third country competent authority for the purpose of assessing the arrangement.