



BANK OF ENGLAND

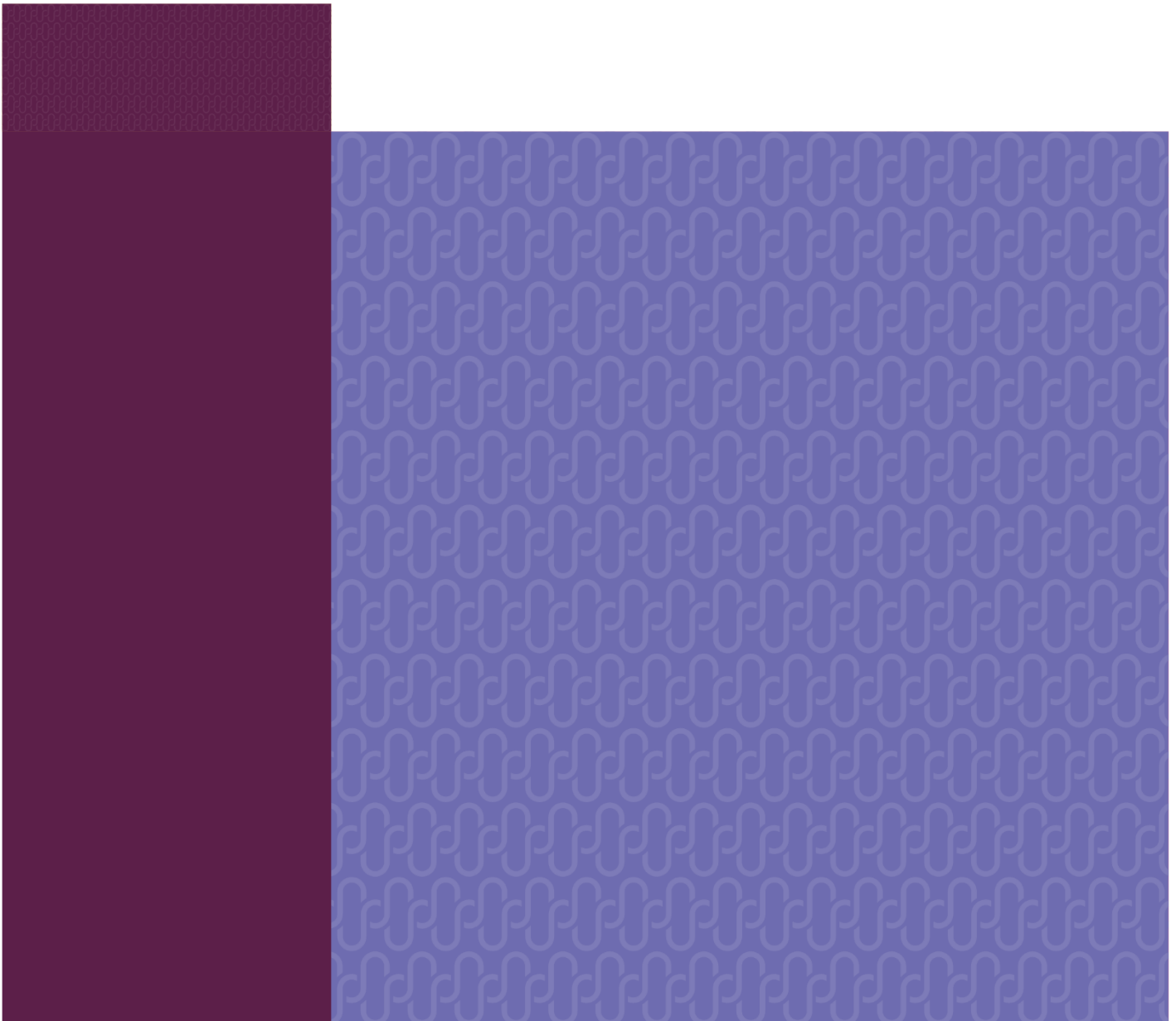
Financial Market  
Infrastructure



Policy Statement

# The Bank of England's approach to comparable compliance under EMIR Article 25a

June 2022





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## 1 Overview

1.1 This Bank of England ('the Bank') Policy Statement (PS) provides feedback to responses to the Consultation Paper (CP) published in November 2021 titled 'The Bank of England's approach to comparable compliance under EMIR Article 25a' (the 'comparable compliance CP').<sup>1</sup> It also contains the Bank's final Statement of Policy (SoP) 'The Bank of England's approach to comparable compliance under EMIR Article 25a' (Appendix 1).

1.2 Under the on-shored European Market Infrastructure Regulation (EMIR)<sup>2</sup>, the Bank is required to 'tier' incoming central counterparties (CCPs) based on the degree to which the CCP poses, or is likely to pose, risks to UK financial stability. An incoming CCP that is designated Tier 2 (where that CCP is systemically important or likely to become systemically important for the financial stability of the UK) will become subject to direct UK supervision and regulation. An incoming CCP that is designated Tier 1 will be primarily supervised and regulated by its home authority.

1.3 This PS is relevant to recognised incoming CCPs that have been designated Tier 2 by the Bank in accordance with EMIR Article 25(2a) and the Bank's policy on tiering incoming CCPs. This PS is also relevant to Tier 2 CCPs' relevant home authorities. It should be read alongside the [Bank's approach to tiering incoming central counterparties under EMIR Article 25](#).

### Background

1.4 Under EMIR Article 25a(1), a Tier 2 CCP ('requesting CCP') may submit a reasoned request that the Bank assesses whether in its compliance with the applicable home regime and taking into account the provisions of the regulations made under EMIR Article 25(6), the CCP may be deemed to satisfy compliance with the following EMIR requirements:

- Article 16 (Capital Requirements);
- Title IV (Requirements for CCPs, including organisational, conduct of business and prudential requirements); and
- Title V (Interoperability Arrangements).

1.5 To this end, the Bank published the comparable compliance CP in November 2021 to consult on how it would approach such a request, jointly with another CP that set out the Bank's proposed approach to tiering incoming CCPs ('the tiering CP')<sup>3</sup>.

1.6 The consultation period closed on 24 February 2022. This PS summarises responses to the comparable compliance CP, provides feedback to those responses and sets out changes to the final policy on the Bank's approach to comparable compliance.

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<sup>1</sup> [Consultation Paper: The Bank of England's approach to comparable compliance under EMIR Article 25a](#).

<sup>2</sup> Regulation (EU) 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories as it forms part of retained EU law, and in particular as amended by the Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020. Unless otherwise stated, any references to EU or EU-derived legislation refer to the version of the legislation which forms part of retained EU law.

<sup>3</sup> [Consultation Paper: The Bank of England's approach to tiering incoming central counterparties under EMIR Article 25](#).

## Implementation

1.7 The Bank will implement its approach to comparable compliance from Thursday 1 December 2022 in order to align the implementation dates of the Bank's tiering, comparable compliance, and fees policies.

## Next Steps

1.8 In conjunction with this PS, the Bank is also publishing a PS<sup>4</sup> providing feedback to responses to the tiering CP.

## 2 Feedback to responses

2.1 The Bank received five responses to the comparable compliance CP. Overall, respondents were generally supportive of the policy and the proposed approach to comparable compliance. Some respondents asked for clarification of the Bank's approach, with a small number recommending minor amendments to the Bank's approach. The Bank has considered the responses received to the comparable compliance CP. This section sets out the Bank's feedback to those responses.

**2.2 Minimising the administrative burden of comparable compliance requests** – One respondent suggested that the Bank process tiering and comparable compliance assessments simultaneously so as to limit overlap in the information requested for each assessment. A CCP can make a request for a comparable compliance assessment while it is going through the tiering process. The Bank intends to limit the administrative and compliance burdens on requesting CCPs to the extent possible, including, where appropriate, by undertaking the tiering and comparable compliance assessments simultaneously, or by utilising information received through the tiering process in any subsequent comparable compliance assessment.

**2.3 Providing more detailed guidance on the approach** – One respondent noted that the proposed approach grants the Bank broad discretion in comparable compliance assessments. The respondent suggested that greater specificity and guidance would increase transparency and avoid uncertainty for requesting CCPs. The Bank notes that comparable compliance requests are firm-specific in nature, depending on the individual circumstances of incoming CCPs which are designated Tier 2. The Bank's assessment of how equivalent supervisory and regulatory outcomes are achieved can also vary. Given this, the Bank does not think it is practical to provide guidance covering all potential types of comparable compliance requests and all eventualities, and does not propose to change the approach consulted on. Instead, the Bank has set out the key principles relating to how it would approach assessing comparable compliance requests in its SoP.

**2.4 Process where comparable compliance has not been granted** – One respondent asked the Bank to clarify (i) whether the Bank would share its conclusions with a requesting CCP where comparable compliance has not been granted, so as to facilitate the requesting CCP's identification of areas for improvement for a potential subsequent request; and (ii) that there are no limitations to making a subsequent request. The Bank will be in regular contact with a requesting CCP through the process of a comparable compliance assessment. For any area(s) where comparable compliance is not granted, the Bank will provide feedback to the requesting CCP, including its rationale for why comparable compliance has not been granted. The Bank will assess the merits of any subsequent request for a comparable compliance assessment on a case-by-case basis and will consider if there

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<sup>4</sup> [Policy Statement: The Bank of England's approach to tiering incoming central counterparties under EMIR Article 25.](#)

are reasonable grounds to proceed with a reassessment (for instance, if there is evidence of changes to the requesting CCP's operations and/or home regulatory regime). Where the Bank is satisfied that there are reasonable grounds, it will proceed with a reassessment. Subject to the Bank's assessment of whether a comparable compliance request is reasonable, there are no limitations on a requesting CCP submitting a request for reassessment.

**2.5 The Bank's oversight of a CCP with comparable compliance** – One respondent asked for clarification of the Bank's process for authorising CCP business changes under EMIR, for example model reviews and updates, where comparable compliance has been granted. The Bank will not engage in independent supervisory activities, conduct independent validations (such as model reviews), independent general investigations or on-site visits in areas where comparable compliance has been granted. This is without prejudice to the Bank's statutory duties including its responsibility as supervisor of incoming CCPs to ensure their ongoing compliance with conditions for recognition.<sup>5</sup>

**2.6 Ongoing monitoring after comparable compliance has been granted** – One respondent requested that the Bank clarify what is meant by 'on an ongoing basis', in the context of the Bank monitoring the home authority's supervisory approach to ensure that equal or comparable supervisory outcomes are being achieved on an ongoing basis. The Bank intends to monitor and assess the appropriateness of comparable compliance via an effective co-operation and information sharing framework with the relevant home authority. The Bank and home authorities will agree an appropriate level of co-operation, including the frequency of engagement and level of information sharing, in order to support the ongoing monitoring of comparable compliance.

**2.7 Review of comparable compliance decisions** – One respondent asked for clarification of the magnitude of a change at (or in relation to) a CCP which had been granted comparable compliance that would trigger a review of a comparable compliance decision in relation to that CCP. The Bank will review the comparable compliance status of a CCP when such changes result in, or may result in, the home regime no longer delivering comparable supervisory outcomes. Given the range of potential circumstances that may lead to a review of a comparable compliance decision, and the specifics of such a decision, the Bank does not think it practical to specify all types of change that might lead to a review of a comparable compliance decision. However, the Bank expects that a review would only be undertaken if the changes made at, or in relation to, the CCP are likely to result in material changes to supervisory outcomes.

**2.8 Exemptions and exceptions** – One respondent recommended that the Bank extends its consideration of exemptions and exceptions to include cases where it is impossible for the requesting CCP to comply with the relevant EMIR requirement without exposing itself to legal risk or acting in a manner (or establishing rules or processes) that would be unenforceable under home regime laws. The Bank is of the view that the current scope of application of exemptions and exceptions for the purposes of granting comparable compliance is appropriate and we have amended the SoP to provide requesting CCPs with sufficient clarity regarding the circumstances in which comparable compliance may be granted. If there are specific circumstances whereby a requesting CCP considers that it may not be able to comply with requirements under EMIR Article 16, Title IV or Title V, the Bank would expect the requesting CCP to notify the Bank of this as part of its comparable compliance request and the Bank will consider these on a case-by-case basis.

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<sup>5</sup> See EMIR Article 25b and the Bank's duties to supervise on an "ongoing basis" the compliance of Tier 2 CCPs with the requirements set out in Article 16 and in Titles IV and V of EMIR.

### 3 Changes to the draft policy

3.1 Having considered the responses above, the Bank has made the following changes to its Statement of Policy:

- Under 'Three-step process to assessing comparable compliance', the Bank has added further details to step 3, regarding the process that it expects to follow for the area(s) where comparable compliance has not been granted.
- As part of a new section at the end of the SoP, the Bank added information on its approach to handling requests for a comparable compliance reassessment.

## Appendix 1

### [Statement of Policy: The Bank of England's approach to comparable compliance under EMIR Article 25a](#)