



HM Treasury, 1 Horse Guards Road, London, SW1A 2HQ

Lord Kinnoull  
Chair of the European Union Committee  
House of Lords  
London

11 January 2021

Dear Lord Kinnoull,

**EXPLANATORY MEMORANDUM (27 JULY 2020) - RECOGNITION OF CENTRAL COUNTERPARTIES (CCPs) – ADDITIONAL CLARIFICATIONS**

Thank you for your letter of 10 December 2020, in which you sought additional clarifications on the points in my letter of 26 November 2020. In particular, you asked for more information about the deficiencies identified in the EU's delegated acts implementing EMIR 2.2 and the timescale for introduction of EMIR 2.2 regulations in the UK. You also asked about the Government's assessment of the likelihood that changes in the UK regulation of CCPs might result in the European Securities and Markets Authority (ESMA) declining to grant 'comparable compliance', as well as the impact this might have on UK CCPs. Finally, you asked for more details on the Memorandum of Understanding (MoU) agreed between the Bank of England and ESMA. On this point I would note that this MoU has now been published, and I have included a copy of the MoU in this response. Further detail is set out in the response below.

**Changes to delegated acts on CCP recognition**

As EMIR 2.2 introduced new elements to the third country CCP recognition process, The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 (S.I. 2020/646) transferred the power to make two delegated acts that further specify how the third country framework will apply in practice to the Bank of England. This is consistent with the Bank of England's existing responsibilities for safeguarding financial stability in general, and managing systemic risk in CCPs in particular. The Government has now taken steps to ensure that the onshored EMIR 2.2 delegated acts were revoked immediately before the end of the Transition Period so that the Bank of England can, subject to HMT approval, finalise the UK's own version of EMIR 2.2. It will therefore be for the Bank of England to determine how best to do this, which includes designing the UK's framework for tiering and comparable compliance, consistent with their mandate

in the onshored EMIR 2.2 to specify further criteria in addition to the primary legislation in these areas. In its annual report on the supervision of financial market infrastructure, presented to Parliament on 3 December 2020, the Bank of England has identified the development of its approach to recognition and supervision of incoming CCPs as a priority. The Bank is currently considering its policy approach and has said that it will set out further details in due course.<sup>1</sup> In the meantime the Bank's Temporary Recognition Regime (TRR) for CCPs ensures that UK firms can continue to access the services provided by non-UK CCPs without disruption.

### **Impact on comparable compliance**

Under EMIR 2.2, ESMA shall assess for comparable compliance against Article 16 (Capital Requirements), Title IV (Requirements for CCPs) and Title V (Interoperability Arrangements) for Tier 2 UK CCPs that request an assessment. EMIR 2.2 Article 25(a) allows ESMA to grant comparable compliance to Tier 2 CCPs. EMIR 2.2 Recital (48) states that where ESMA has assessed that a Tier 2 CCP in its compliance with the applicable third-country legal framework is deemed to comply with the requirements set out in Article 16 and Titles IV and V of EMIR, the conduct of that CCP should not be considered an infringement of that Regulation to the extent that it complies with those comparable requirements. If a UK Tier 2 CCP decided to request comparable compliance, we would expect ESMA to process the application in an orderly fashion, according to the relevant rules and legislation. The European Commission has now adopted a Delegated Regulation on comparable compliance, which specifies the minimum elements to be assessed and the modalities and conditions ESMA should take into account when considering requests for comparable compliance. We note that the decision on comparable compliance would have no impact on ESMA's existing recognition decisions. Granting or declining comparable compliance is an autonomous decision for ESMA to make, based on the criteria outlined in EMIR 2.2 and the Delegated Regulation. Since the adoption of the Delegated Regulation, ESMA has not made any statement on its approach to comparable compliance. I'm afraid I cannot therefore speculate on ESMA's intentions here, however I would note that the UK is committed to maintaining high standards and achieving the same or better outcomes as today, while working collaboratively with international partners.

### **Supervisory cooperation between the Bank of England and ESMA**

You asked for more detail on what actions the Bank of England has committed to undertake in the MoU it has agreed with ESMA, even if these commitments are not legally binding. The Bank of England and ESMA have now published the MoU

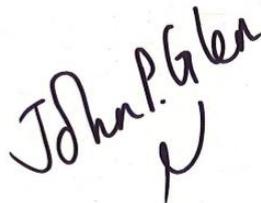
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<sup>1</sup> Bank of England's Financial Market Infrastructure Annual Report (2020), p. 20.

on their respective websites, and a copy of the MoU is attached with this letter. As you note, the Bank of England is satisfied that the arrangements concluded do not compromise its regulatory autonomy or jeopardise its statutory objectives. The MoU includes provisions on cooperation and information-sharing arrangements with respect to UK CCPs. The Bank-ESMA MoU is broadly similar to the cooperation arrangements the Bank formalised with the United States' Commodity Futures Trading Commission on 20 October 2020. A copy of the Bank-CFTC MoU is attached with this letter for information.

I hope this letter provides the Committee with sufficient information and I am happy to provide further details to address any additional questions the Committee may have.

I am copying this letter to Sir William Cash, Chair of the European Scrutiny Committee, who wrote to us on a similar matter.

A handwritten signature in black ink, reading "John P. Glen" with a stylized flourish underneath.

JOHN GLEN