



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 27 March 2013

8009/13

**EF 57
ECOFIN 228**

COVER NOTE

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date of receipt: 22 March 2013

to: Mr Uwe CORSEPIUS, Secretary-General of the Council of the European
Union

No Cion doc.: COM(2013) 158 final

Subject: Report from the Commission to the European Parliament and the Council
- The International Treatment of Central Banks and Public Entities Managing
Public Debt with regard to OTC Derivatives Transactions

Delegations will find attached Commission document COM(2013) 158 final.

Encl.: COM(2013) 158 final



Brussels, 22.3.2013
COM(2013) 158 final

**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND
THE COUNCIL**

**The International Treatment of Central Banks and Public Entities Managing Public
Debt with regard to OTC Derivatives Transactions**

(Text with EEA relevance)

1. INTRODUCTION

The Regulation on OTC derivatives, central counterparties and trade repositories (EMIR) was adopted on 4 July 2012 and entered into force on 16 August 2012¹. EMIR requires the central clearing of all standardised OTC derivatives contracts (clearing obligation), margins for non-centrally cleared contracts (margins requirements) and the reporting of all derivatives contracts to trade repositories (reporting obligation).

The Union's central banks and Union public bodies charged with or intervening in the management of public debt are exempted from EMIR and are, therefore, not subject to the clearing obligation, to risk-mitigation techniques for uncleared trades or to the reporting obligation.

At the time of adoption of EMIR, there were uncertainties on the treatment of foreign central banks in the application of OTC derivatives reforms in other jurisdictions. The European Parliament and the Council therefore postponed a decision on the application of EMIR to third-country central banks until more clarity could be reached on this issue.

The European Commission was requested under Article 1(6) of EMIR to analyse the international treatment of central banks and of public bodies managing public debt in other jurisdictions' legal framework and to inform the European Parliament and the Council of its comparative analysis three months after the entry into force of EMIR. If the report concludes that the exemption of the monetary responsibilities of those third-country central banks from the clearing and reporting obligation is necessary, EMIR empowers the Commission to adopt a delegated act to extend the list of exempted entities under EMIR.

2. THE REPORT'S LEGAL BASIS: EMIR ARTICLE 1 REQUIREMENTS

EMIR Article 1(4) provides that "*This Regulation shall not apply to: (a) the members of the ESCB and other Member States' bodies performing similar functions and other Union public bodies charged with or intervening in the management of the public debt; (b) the Bank for International Settlements*".

With regard to foreign central banks and foreign public bodies managing public debt, Article 1(6) empowers the Commission to adopt delegated acts to amend the list of exempted entities in Article 1(4) and, to that end, requires the Commission to "*present to the European Parliament and the Council a report assessing the international treatment of public bodies charged with or intervening in the management of the public debt and central banks*" three months after the entry into force of EMIR.

Article 1(6) also specifies that "*The report shall include a comparative analysis of the treatment of those bodies and of central banks within the legal framework of a significant number of third countries, including at least the three most important jurisdictions as regards volumes of contracts traded, and the risk-management standards applicable to the derivative transactions entered into by those bodies and by central banks in those jurisdictions. If the report concludes, in particular in regard to the comparative analysis, that the exemption of the monetary responsibilities of those third- country central banks*

¹ Regulation (EU) No 648/2012.

from the clearing and reporting obligation is necessary, the Commission shall add them to the list set out in paragraph 4 [list of exempted entities under EMIR]."

3. JURISDICTIONS CONSIDERED: JAPAN, SWITZERLAND AND THE UNITED STATES

EMIR requires the Commission to conduct a comparative analysis of the treatment of central banks and public bodies managing public debt in *"a significant number of third countries, including at least the three most important jurisdictions as regards volumes of contracts traded"*.

3.1. Three most important jurisdictions as regards volumes of contracts traded: United States, Switzerland and Japan

Given the global nature of OTC derivatives markets and the historical lack of transparency in these markets, detailed data on OTC derivatives by jurisdictions worldwide were not available. Nevertheless, banks' total balance sheets can serve as a useful and simple proxy for the size of the banks' OTC derivatives portfolio and volumes of contracts traded by jurisdictions. It is also a good indicator of the systemic risk these markets present. The Bank of International Settlements (BIS) provides detailed statistics on banks' balance sheets by jurisdictions which have been used in this report to select the jurisdictions to be analysed.

According to the most recent BIS data² (*"Amounts outstanding for the International positions by nationality of ownership of reporting banks"*, March 2012), the three most important jurisdictions as regards volumes of contracts traded using the banks' total balance sheet as proxy are the United States, Japan and Switzerland. The table below shows the most recent BIS data for the most important jurisdictions. Non-EU jurisdictions are in bold.

<i>Parent country of bank</i>	<i>Total positions/Liabilities</i>
USA	5012.2
UK	4885.9
France	3484.4
Germany	3349.2
Switzerland	2751.9
Japan	2361.1
Netherlands	1705.4
Sweden	1291.7
Australia	948.5
Spain	916.0
Canada	912.5
Italy	825.1
Hong Kong SAR	539.0

Table: International positions by nationality of ownership of reporting banks,
Amounts outstanding in billions of US dollars,
Source: BIS

² <http://www.bis.org/statistics/bankstats.htm>, Table 8A

3.2. Other significant jurisdictions: Australia, Canada, Hong-Kong

With the view to include a larger number of third countries in the comparative analysis, the report also analyses the legislative framework of Australia, Canada and Hong Kong with respect to OTC derivatives markets, which are the three next most important jurisdictions as regards volumes of contracts traded.

3.3. Advance made with regard to reforms on OTC derivatives markets in the United States, Switzerland, Japan, Australia, Canada and Hong Kong

This report gives a comparative analysis of the regulatory framework in the United States, Switzerland, Japan, Australia, Canada and Hong Kong. The Commission services have contacted these jurisdictions to gather information on their relevant legal frameworks on OTC derivatives transactions applicable to central banks and public bodies charged with or intervening in the management of the public debt. It is important to note that these jurisdictions are at different stages with regard to the process of adopting and implementing OTC derivatives reforms. The United States are entering the implementation phase. Japan has just recently passed its new regulation. Switzerland is in the phase of preparing a draft regulation to introduce a new regulatory framework. Australia and Hong Kong have proposed their regulatory regime to implement OTC derivatives reforms but they have not yet been adopted. Canada is still finalizing its proposal for its legal framework for the implementation of OTC derivatives reforms.

- **USA**

The Dodd-Frank Wall Street Reform and Consumer Protection Act was passed in July 2010. Since then, the Commodity Futures Trading Commission (CFTC) and Securities and Exchange Commission (SEC) have finalized the majority of implementing rules to be developed under Dodd-Frank. The United States are now entering the implementation phase, with a phase-in approach described below.

Reporting obligation

Mandatory reporting and transparency rules started applying from 12 October 2012. The reporting obligation is phased-in by products and types of market participant: (i) from 12 October 2012, major market participants³ must commence reporting interest rate swaps and credit default swaps; (ii) from January 2013, the reporting obligation for these participants will be extended to equity swaps, foreign exchange swaps and other commodity swaps; and (iii) from April 2013, all market participants (including non-swap dealer or non-major swaps participants) will have to comply with the reporting obligation in all asset classes.

Clearing obligation

The clearing obligation will be phased-in by products and type of market participants. The CFTC proposed on 24 July 2012 the first classes of swaps that will be subject to mandatory clearing, which includes two classes of credit default swaps and four classes of interest rate swaps to be cleared by registered central counterparties and the rules will be finalised by Q4 2012. A phased-in approach by type of market participant will then

³ Exchanges and platforms, clearing houses, swap data repositories, Swap Dealers (SDs), and Major Swaps Participants (MSPs).

apply (90/180/270 days to comply with the clearing obligation)⁴. A similar approach will follow for other asset classes.

- **Switzerland**

There is no mandatory clearing or trade reporting regime in place in Switzerland for OTC derivatives transactions. Switzerland is, however, committed to the implementation of the G20 reforms on OTC derivatives. The Swiss Federal Council decided on 27 August 2012 that the existing Swiss regulation of financial market infrastructure needed to be amended to comply with the FSB recommendations and with the new standards developed by international standards setters for financial market infrastructures.

The Federal Department of Finance has been instructed to prepare a draft consultation paper by spring 2013 and aims at coordinating its approach with the EU with the view to adopt a regulation equivalent to EMIR. In its press release of 29 August 2012, the State Secretariat for International Financial Matters expressly stated that "*In order to ensure the competitiveness of Swiss market players and market access in the EU, regulation equivalent to that of the EU is to be sought in [trading and financial market infrastructure reforms]*".

Switzerland is, therefore, in the phase of preparation of its upcoming reforms and the Swiss regulatory framework is still to be defined.

- **Japan**

The Japanese FSA promulgated in July 2012 a cabinet office ordinance which took effect on 1 November 2012 with respect to reforms regarding mandatory use of central counterparties (clearing obligation) and trade repositories (reporting obligation).

Reporting obligation

Financial institutions registered under the Financial Instruments Exchange Act (FIEA) will be required to report to trade repositories OTC derivatives transactions for which trade repositories services are available, such as credit derivatives transactions and forward, option and swap transactions in relation to interest rate, foreign exchange and equity. Applicable transactions will be reviewed for expansion after November 2012, taking into account further developments in market infrastructure.

Clearing obligation

Japan envisages a phased-in implementation. As described in the FSB's fourth progress report on the implementation of OTC derivatives reforms, starting in November 2012, certain standardized credit default swaps⁵ and interest rate swaps⁶ will be subject to mandatory clearing. The scope of products subject to mandatory clearing will then be

⁴ The first group of entities that will be required to clear within 90 days of the CFTC issuing a final clearing determination includes swap dealers, major swap participants, and private funds that enter into more than 200 swaps per month. The second group, which must comply within 180 days, includes all other private funds, commodity pools and others involved in financial activities. The third group, which is allowed 270 days to comply with the clearing requirement, includes any persons not captured by the first two groups, such as clearing for third-party subaccounts and retirement plans.

⁵ Index-based CDS (i.e. iTraxx Japan Index Series)

⁶ Plain-vanilla JPY denominated IRS with reference to LIBOR

expanded to other OTC derivatives⁷ taking into consideration elements such as the size of transactions and degree of standardisation.

Also, in an initial stage, the scope of the mandatory clearing requirements will be applied only to transactions in OTC derivatives concluded between major domestic financial institutions⁸. The clearing requirements could be expanded in the future to transactions between these domestic financial institutions and foreign financial institutions (not registered under FIEA), taking into account international discussions currently underway on cross-border regulation.

Foreign central banks are, therefore, not in scope of the reporting and clearing obligations imposed by OTC derivatives markets reforms in Japan.

- **Australia**

On 12 September 2012, the Australian Government introduced a bill into the Parliament (the Corporations Legislation Amendment (Derivatives Transaction) Bill 2012) providing a legislative framework to implement OTC derivatives markets reforms in Australia. The framework proposes a flexible approach, enabling the Minister to decide whether mandatory clearing, reporting or organised platform trading should apply to certain classes of OTC derivatives.

The bill has been passed by the House of Representatives and is awaiting consideration by the Senate. The legislation should be in place by end 2012.

Implementing regulations and rules would be required before any mandatory obligations are imposed. Under the framework, the Australian Securities and Investments Commission (ASIC) will be authorised to issue implementing rules. The Reserve Bank of Australia, the Australian Prudential Regulation Authority and ASIC are entitled to give advice to the Minister about whether mandatory obligations should apply to specific classes of OTC derivatives.

In Australia, the legislative framework for the implementation of OTC derivatives reforms has therefore been proposed but has not yet been adopted. Implementing rules will also need to be further defined.

- **Canada**

In Canada, the legislative framework for implementing OTC derivatives markets reforms is not yet fully defined. The largest provinces in terms of OTC derivatives and others are currently working on getting the legislation in place⁹. The Canadian Securities Administrators (CSA) is working on drafting the implementing regulation or rules associated with the legislation.

⁷ JPY denominated IRS with reference to TIBOR, foreign currency (US\$ and euro) denominated IRS, and CDS referencing a Japanese company.

⁸ Products subject to mandatory clearing between large domestic financial institutions registered under the Financial Instruments Exchange Act (FIEA) that are members of the clearing organisation (Japan Securities Clearing Corporation, JSCC) or that are subsidiaries of a parent company that is a member of JSCC.

⁹ The powers for securities regulation belong to the provinces in Canada.

Reporting

The CSA published a consultation paper on trade repositories to inform the rules making process. Ontario and Quebec have already amended legislation to support reporting to trade repositories and regulatory access to data and most provinces are assessing whether legislative changes may be required. The CSA will consult on rules for trade reporting and trade repositories, which should be finalised early 2013. Requirements are scheduled to be implemented in the first semester of 2013.

Clearing

Canadian Securities Administrators (CSA) conducted a consultation on clearing which closed in Q3 2012 and will inform the upcoming rule making. Provincial regulation for central clearing is expected to be in place in the provinces where the majority of OTC derivatives are booked by mid-2013. Further work will, however, be required to harmonise the legislation across all provinces. The CSA is also working on drafting implementing rules for central clearing, which are expected to be published for consultation early 2013.

- **Hong Kong**

Hong Kong proposed its regulatory regime for OTC derivatives markets reforms, following the conclusion of its consultation process. The legislative process to adopt the new regulatory regime is still under way.

The Hong Kong Monetary Authority (HKMA) and Securities and Futures Commission of Hong Kong (SFC) conducted a public consultation in October 2011 on their proposed OTC derivatives regulatory regime for Hong Kong, including mandatory clearing and reporting. Following the consultation process, HKMA and SFC released in July 2012 their joint conclusions. The legislative proposal has not been yet finalised.

Reporting

The regulatory proposal for mandatory reporting has been reviewed by a panel committee of the Legislative Council and is now under legislative drafting. The aim is to introduce the required legislative amendments before the legislature in early 2013. The approach will be phased-in, beginning with interest rate swaps and non-deliverable forwards.

The regulatory framework proposed in Hong Kong provides for location requirements for reporting to trade repositories: all derivatives transactions that have a bearing on Hong Kong's financial markets would be required to be reported to the local trade repository developed by HKMA trade repository.

Clearing

The consultation conclusions limit clearing obligations to transactions booked in Hong Kong. Taking into consideration the responses received from the consultation, the regulators have started working on a legislative proposal to be submitted to the Legislative Council, with the aim of introducing the required legislative amendments in early 2013. In the meantime, an interim legislative proposal exists to support voluntary clearing of certain derivatives transactions through local CCPs recognized by the SFC.

4. INTERNATIONAL TREATMENT OF CENTRAL BANKS AND DEBT MANAGEMENT OFFICES IN THESE JURISDICTIONS

- USA

The Dodd-Frank Act excludes swaps of a counterparty which is a Federal Reserve Bank, the Federal Government or a Federal agency that is expressly backed by the full faith and credit of the United States¹⁰. Other central banks, i.e. foreign central banks, are not included in this exclusion.

The CFTC and SEC have considered the application of each of the requirements laid down in the Dodd-Frank Act and sought to limit their effects to foreign central banks on a case-by-case basis when developing the implementing rules, as described below.

Assuming that public bodies charged with or intervening in the management of public debt are part of the government, foreign central banks and foreign public debt management bodies are covered by same regime. In other words, as described below, public bodies managing public debt will also benefit from an exemption from the clearing and reporting obligations.

Registration requirements

As a general matter, the CFTC has exempted a central bank from registration requirements that might otherwise be applicable if such an institution were deemed to fall within the definition of a swap dealer or major swap participant.

In its final joint rulemaking¹¹ with the SEC, the CFTC and SEC defined key terms set forth in the DFA, including definitions of the term “swap dealers,” “major swap participants,” and an “eligible contract participant.”

In the CFTC’s federal register release, the Commission noted that while foreign entities are not necessarily immune from US jurisdiction for commercial activities undertaken in US markets, there is nothing in the relevant provisions of the DFA or legislative history to indicate that Congress, in passing the DFA, intended to deviate from the traditions of the international system by including foreign governments, foreign central banks and international financial institutions within the definitions of the term “swap dealer or “major swap participant.”

Accordingly, the CFTC interpreted that such foreign governments, foreign central banks and international financial institutions should not be required to register as swap dealers or major swap participants with the CFTC¹².

¹⁰ DFA, Sec 721-47(B) on SWAP-Exclusions: *"The term 'swap' does not include [...]: (ix) any agreement, contract, or transaction a counterparty of which is a Federal Reserve bank, the Federal Government, or a Federal agency that is expressly backed by the full faith and credit of the United States; [...]"*

¹¹ See 77 Fed. Reg. 30596 (May 23, 2012)

¹² See 77 Fed. Reg. 30596, 30693.

Reporting obligation

As they are exempt from registration requirements, foreign central banks are also exempt from the reporting obligation. However, a US counterparty entering into a transaction with a foreign central bank would still be subject to the reporting obligation under DFA. For example, in the event that a European central bank enters into a transaction with a CFTC-registered swap dealer, that swap dealer would still be subject to recordkeeping and reporting requirements applicable to the swap, even though the transaction would not be subject to mandatory clearing requirements.

This situation is consistent with EMIR (where the counterparty to a central bank's transaction still has to report), but creates a differentiated approach between US and foreign central banks under the DFA. Indeed, transactions with US central banks are fully exempted from DFA and so do not have to be reported, while transactions with foreign central banks will have to be reported by the US counterparty.

Clearing obligation

In a separate rulemaking¹³, the CFTC has addressed various exceptions to the otherwise applicable requirement that all swaps must be submitted to a CCP registered with the CFTC for clearing and has interpreted that a foreign central bank is exempt from any mandatory clearing requirements that might otherwise apply.

In reaching a determination that foreign governments, foreign central banks and international financial institutions should not be subject to the DFA clearing requirement promulgated by Congress, the CFTC cited similar considerations that it had earlier discussed when granting the registration exemption presented above. In particular, the CFTC noted¹⁴ that it is assumed that “*legislators take account of the legitimate sovereign interests of other nations when they write American laws*”. In this regard, the CFTC noted that there is nothing in the DFA to suggest that Congress intended to deviate from these traditions when promulgating the clearing requirements in the Act, and given considerations of comity, the Commission stated¹⁵ that foreign governments, central banks and international financial institutions should not be subject to the clearing mandate set forth in the DFA.

- **Switzerland**

There is no mandatory clearing or trade reporting regime in place in Switzerland for OTC derivatives transactions. Consequently, OTC derivatives executed with the Swiss National Bank or with any other central bank or with domestic or non-domestic public bodies charged with or intervening in the management of the public debt, do not need to be centrally cleared or reported under Swiss law. Similarly, no bilateral risk mitigation techniques would apply to transactions involving a central bank.

Switzerland has publicly announced that it intends to closely follow EMIR's approach and aims at adopting an equivalent regulation. Foreign central banks under Swiss law are

¹³ See 77 Fed. Reg. 42560 (July 19, 2012).

¹⁴ See 77 Fed. Reg. 42560, 42562.

¹⁵ See 77 Fed. Reg. 42560, 42562.

therefore likely to benefit from an equivalent treatment as foreign central banks under EMIR.

- **Japan**

In Japan, the Cabinet Office Order that came into effect on 1 November 2012 exempts transactions with foreign central banks and public debt management bodies from the clearing and reporting obligations.

- **Hong Kong**

The treatment of central banks is discussed in the joint HKMA-SFC conclusions published in July 2012 following the consultation process (see above). These conclusions propose exemptions from the clearing and reporting obligations for central banks and for public entities managing public debt from jurisdictions that provide reciprocal arrangement for Hong Kong central banks and debt management offices.

Reporting obligation

According to the currently proposed approach, foreign central banks and public entities managing public debt would be exempted from the reporting obligation. The joint HKMA-SFC conclusions published in July 2012 conclude that: *“with respect to exemptions for central banks, etc., we have considered regulations proposed in other financial centres. In view of these, we are prepared to consider incorporating limited exemptions in respect of public sector entities involved in the management of public debt from the mandatory reporting obligation in order to avoid affecting their powers to stabilise the market, as and when required. These include central banks, monetary authorities or public bodies charged with the management of public debt and reserves and the maintenance of market stability, as well as global institutions such as the International Monetary Fund, the Bank for International Settlements, etc. Specifically, our current thinking is that – (1) all such global institutions should be exempted in full from the reporting obligation, (2) for central banks, authorities and bodies, criteria such as reciprocity will be taken into account when determining whether to grant reporting exemptions”*¹⁶.

However, counterparties subject to Hong Kong regulatory regime entering into a transaction with a foreign central bank would still be subject to the reporting obligation. This approach is consistent with EMIR.

Clearing obligation

Similarly, according to Hong Kong current proposed approach, foreign central banks and public entities managing public debt would be exempted from the clearing obligation. The joint HKMA-SFC conclusions published in July 2012 conclude that: *“We have carefully considered the feedback on blanket exemptions from clearing, and see merit in providing for some of the exemptions sought. We note also that, as more jurisdictions provide details of their proposed OTC derivatives regulations, a clearer trend is emerging of the types of blanket exemptions that may be introduced in major jurisdictions like the US and the EU. In view of this, we are reconsidering whether to*

¹⁶ Paragraph 127,
<http://www.hkma.gov.hk/media/eng/doc/key-information/press-release/2012/20120711e3a34.pdf>

grant clearing exemptions, and if so to what extent. In particular – (1) We are prepared to consider granting clearing exemptions in respect of transactions with certain central banks, monetary authorities or public bodies charged with the management of public debt and reserves and the maintenance of market stability, as well as global institutions such as the International Monetary Fund, the Bank for International Settlements, etc. Criteria such as reciprocity will be taken into account when determining whether to grant exemption for central banks, monetary authorities and public bodies.”¹⁷

Hong Kong will continue to monitor international standards and practices to determine the details regarding such exemption, which will be consulted on in Q1 2013.

- **Australia**

The Derivatives Transaction Bill, as currently proposed in Australia, does not carve in or carve out any entities or persons from mandatory obligations on trade reporting or central clearing.

When the Minister makes a determination that a mandatory obligation will apply to specified classes of OTC transactions, he has the discretion, at that point, to limit the entities the mandatory obligation could apply to¹⁸. Subject to any limits set under regulations, Australian Securities and Investments Commission (ASIC) will be expected to make rules that specify the details of how participants can comply with mandatory obligations. The rules can also provide exemptions. The ultimate scope of any mandatory obligation would, therefore, be considered as part of upcoming consultation processes for the Minister’s determinations, regulations or ASIC’s rules.

From exchanges with staff, the preliminary thinking at the staff level indicates that central banks/government entities would probably be carved out of mandatory clearing and reporting obligations. However, no formal decision has been made yet.

This thinking and approach was noted in the April 2012 consultation, which provided that¹⁹: *“The benefits of any central clearing rules must be balanced against their costs. A major factor in determining the costs (and practicalities) of a mandatory central clearing regime is the nature of the parties which may potentially be subject to obligations imposed under the regime. It may therefore be appropriate to only apply the clearing obligation to some entities. (...) One option may be to exclude public entities, such as*

¹⁷ Paragraph 167,

<http://www.hkma.gov.hk/media/eng/doc/key-information/press-release/2012/20120711e3a34.pdf>

¹⁸ Section 901-D of the OTC derivatives bill

(<http://www.treasury.gov.au/ConsultationsandReviews/Submissions/2012/Derivative-Transactions>)

901D - Regulations may limit the persons on whom requirements may be imposed

The regulations may provide that the derivative transaction rules: (a) cannot impose requirements (or certain kinds of requirements) on certain classes of persons; or (b) can only impose requirements (or certain kinds of requirements) on certain classes of persons in certain circumstances.

Note: A class of persons may be described by reference to any matter, including (for example): (a) the volume of derivative transactions entered into by persons over a period; or (b) the characteristics or nature of persons or of their businesses; or (c) the place of residence or business of persons.

¹⁹ See title ‘Entities’ of the Consultation Paper (*Implementation of a framework for Australia’s G20 over-the-counter derivatives commitments, page 17*) – April 2012

http://www.treasury.gov.au/~media/Treasury/Consultations%20and%20Reviews/2012/Over%20the%20counter%20derivatives%20commitments%20consultation%20paper/Key%20Documents/PDF/OTC%20Framework%20Implementation_pdf.ashx

central banks, debt offices, supra-national multilateral development banks and entities such as the International Monetary Fund (IMF)."

- **Canada**

Rules are not yet finalised. Exchanges at staff level indicate that some type of exemption for Bank of Canada (or possibly more generally, central banks) is under consideration for both the clearing and reporting obligations. Consideration may also be given to possible exemptions for the Government of Canada and other public bodies. Work on these exemptions is, however, not yet completed.

It is, therefore, too early to conclude on the treatment of central banks and public entities managing public debt under the forthcoming Canadian regulatory regime.

- **Summary table**

	Clearing Obligation	Reporting Obligation
EU	Exempted	Exempted
US	Exempted	Exempted
Japan	Exempted	Exempted
Switzerland	Will be exempted	Will be exempted
Australia	Exemption envisaged	Exemption envisaged
Canada	Exemption to be considered	Exemption to be considered
Hong Kong	Exemption envisaged	Exemption envisaged

International treatment of foreign central banks and public entities managing public debt

5. CONCLUSIONS

In the light of the above, central banks and public bodies charged with or intervening in the management of public debt will not be subject to the clearing and reporting obligation under the US and Japanese and upcoming Swiss regulatory frameworks. They are also likely to be exempted under the forthcoming Australian and Hong Kong legal frameworks. Exemptions under the Canadian regime can also be expected.

Adding foreign central banks²⁰ to the list of exempted entities under EMIR will prevent interfering with the conduct of their monetary responsibilities and promote a level-playing field in the application of OTC derivatives reforms with regard to transactions with central banks across these jurisdictions, as far as the central clearing and reporting obligations are concerned. This will also contribute to greater international coherence and consistency.

The exercise of monetary responsibilities and the management of sovereign debt have joint impacts on the functioning of interest rate markets which must be coordinated to ensure that these two functions are performed efficiently. As EMIR excludes from its scope EU central banks and other EU public bodies managing debt in order to avoid limiting their power to perform their tasks of common interest, applying different regimes to these two functions when they are exercised by third-country entities would be detrimental to their respective effectiveness. In order to ensure that third country

²⁰ The central banks in all the jurisdictions analysed in this report perform functions related to their monetary responsibilities.

central banks and other public bodies charged with or intervening in the management of the public debt continue to perform adequately their tasks, third-country public bodies charged with or intervening in the management of the public debt should also be included in the delegated acts adopted under Article 1(6).

With regard to risk-mitigation techniques for trades that are not centrally cleared in a CCP, the global picture is still uncertain. An international working group²¹ is expected to present its recommendations for the G20 jurisdictions end 2012. Its latest draft text recommends exempting transactions with central banks from the scope of margin requirements²². This is in line with the EU rules (EMIR). The Commission will pay close attention to the development of the WGMR report and its implementation in other jurisdictions.

The comparative analysis in this report is by no means exhaustive. It is also based on some third-countries' legislation that is non-final. The report will need to be updated regularly as the reform process advances in these and other G20 jurisdictions.

At this stage, the Commission concludes a delegated act is required to amend Article 1(4) of EMIR and to exempt the central banks and public bodies charged with or intervening in the management of public debt from Japan and the United States, which are the two jurisdictions with final rules on OTC derivatives in place.

As Australia, Canada, Hong Kong and Switzerland proceed with finalising their rules, the Commission will monitor and report on the latest developments with a view to also exempting their respective central banks and debt management offices on the basis of the rules that are currently proposed in those jurisdictions. In order to ensure that third country central banks and other public bodies charged with or intervening in the management of the public debt continue to perform adequately their tasks, other countries will also be considered in the future, as needed. Further amendments of Article 1(4) of EMIR to include countries not listed in this first report may, therefore, be expected.

In the immediate future, no market disruption will be imposed on third countries that are not included in the first delegated act, since the obligations related to central clearing and risk mitigation techniques for uncleared trades have not yet entered into force in the Union. The European Commission will pay close attention to the timing of the entry into force of these obligations with the exemptions of third country central banks.

²¹ WGMR- Working Group on Margins Requirements.

²² <http://www.bis.org/press/p120706.htm>, *Margin requirements for non-centrally cleared derivatives*, BCBS and IOSCO, 6 July 2012