

**2014 No. 9**

**STAMP DUTY**

**STAMP DUTY RESERVE TAX**

**The Stamp Duty and Stamp Duty Reserve Tax (European Central Counterparty N.V.) Regulations 2014**

<i>Made</i> - - - -	<i>8th January 2014</i>
<i>Laid before the House of Commons</i>	<i>9th January 2014</i>
<i>Coming into force</i> - -	<i>30th January 2014</i>

The Treasury make the following Regulations in exercise of the powers conferred by sections 116 and 117 of the Finance Act 1991(a).

**Citation, commencement and effect**

1.—(1) These regulations may be cited as the Stamp Duty and Stamp Duty Reserve Tax (European Central Counterparty N.V.) Regulations 2014 and come into force on 30th January 2014.

(2) These Regulations have effect—

- (a) for the purposes of the charge to stamp duty, in relation to instruments executed on or after 30th January 2014;
- (b) for the purposes of the charge to stamp duty reserve tax—
  - (i) in the case of agreements to transfer traded securities or options which are not conditional, in relation to agreements made on or after 30th January 2014;
  - (ii) in the case of agreements to transfer traded securities or options which are conditional, in relation to agreements where the condition is satisfied on or after 30th January 2014.

**Interpretation**

2. In these Regulations—

“clearing member client contract” has the same meaning as in section 155 of the Companies Act 1989(b);

“clearing participant” means a member of ECCN who as such is permitted by the Rules of ECCN to clear facility transactions and/or over the counter transactions;

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(a) 1991 c. 31. Section 116(4) was amended by paragraph 5 of Schedule 20 to the Financial Services and Markets Act 2000 (c. 8), by paragraph 7 of Schedule 21 to the Finance Act 2007 (c. 11) and by regulation 20 of S.I. 2013/504. Sections 116(1)(b) and 117(b) were amended by section 65 of the Finance Act 2010 (c. 13) and substituted by regulation 20 of S.I. 2013/504.

(b) 1989 c. 40. Section 155(1) was amended by regulation 4 of S.I. 2013/504.

“client” means a person who gives instructions to a non-clearing firm for traded securities or options to be sold in a facility transaction or an over the counter transaction;

“default rules” and “defaulting” have the same meaning as in section 188 of the Companies Act 1989(a);

“ECCN” means European Central Counterparty N.V.(b);

“EEA central counterparty” and “third country central counterparty” have the same meaning as in section 285 of the Financial Services and Markets Act 2000(c);

“facility” means a recognised investment exchange within the meaning of sections 116(4)(b) and 117(3) of the Finance Act 1991;

“facility transaction” means a transaction in traded securities or options that is made on or reported to a recognised investment exchange;

“nominee” means, save in relation to a non-clearing firm or its client (regulation 4(6)(b) and (e)), a person whose business is or includes holding traded securities or options as a nominee for ECCN, or another prescribed recognised clearing house, prescribed EEA central counterparty or prescribed third country central counterparty acting in its capacity as a person providing clearing services in connection with an over the counter transaction or a facility transaction, or as a nominee for a clearing participant;

“non-clearing firm” means a person other than a clearing participant who has an agreement with a clearing participant to clear over the counter transactions or facility transactions or both;

“option” means an option to buy or sell traded securities;

“over the counter transaction” means a transaction in traded securities or options made other than on a recognised investment exchange;

“traded securities” means stocks and shares which are issued or raised by a body corporate but does not include stocks and shares issued or raised by a body corporate not incorporated in the United Kingdom unless—

- (a) the stocks and shares are registered in a register kept in the United Kingdom by or on behalf of the body corporate; or
- (b) in the case of shares, they are paired, within the meaning of section 99(6A) of the Finance Act 1986(d), with shares issued by a body corporate incorporated in the United Kingdom.

### **Prescription of ECCN**

3. ECCN is prescribed as a recognised clearing house for the purposes of sections 116 and 117 of the Finance Act 1991.

### **Prescribed circumstances for the purposes of section 116 and 117**

4.—(1) In the circumstances prescribed by paragraph (2) or paragraph (5), the charges to stamp duty and stamp duty reserve tax shall be treated as not arising.

(2) The circumstances prescribed by this paragraph are where, in connection with a facility transaction or an over the counter transaction, the conditions in paragraphs (3) and (4) are met.

(3) A clearing member client contract entered into by a defaulting clearing participant (“DCP”) is transferred from the DCP to a non-defaulting clearing participant in accordance with the defaulting rules of ECCN.

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(a) Section 188 has been relevantly amended by regulations 4 and 13 of S.I. 2013/504 and by regulation 2 of S.I. 2013/908.  
(b) European Central Counterparty N.V. is a recognised clearing house within the meaning of section 285(1)(b) of the Financial Services and Markets Act 2000 (c. 8). Section 285(1)(b) was substituted by regulation 3 of S.I. 2013/504.  
(c) 2000 c. 8.  
(d) 1986 c. 41. Section 99(6A) was inserted by section 144 of the Finance Act 1988 (c. 39), and was amended by section 113(2) of the Finance Act 1990 (c. 29).

(4) The clearing member client contract referred to in paragraph (3) does not represent the end transaction in the clearing of that contract either before or after the transfer.

(5) The circumstances prescribed by this paragraph are where, in connection with a facility transaction or an over the counter transaction (excluding transactions that come within section 80C and 89AA of the Finance Act 1986(a)), conditions A, B and C are met.

(6) Condition A is that traded securities or options are transferred, or agreed to be transferred, from—

- (a) a clearing participant or its nominee to another clearing participant or its nominee;
- (b) a non-clearing firm or its client, or nominee of a non-clearing firm or its client, to a clearing participant or its nominee;
- (c) a clearing participant or its nominee to ECCN or its nominee;
- (d) a person other than a clearing participant to ECCN or its nominee, as a result of a failure by a clearing participant to fulfil its obligations in respect of the transaction concerned to transfer traded securities or options to ECCN or its nominee;
- (e) a person other than a clearing participant to a clearing participant or its nominee as a result of a failure by a non-clearing firm or its client, or nominee of a non-clearing firm or its client or by another clearing participant or its nominee to fulfil its obligations in respect of the transaction concerned to transfer traded securities or options to that clearing participant or its nominee;
- (f) a prescribed recognised clearing house or its nominee to ECCN or its nominee;
- (g) a prescribed EEA central counterparty or its nominee to ECCN or its nominee;
- (h) a prescribed third country agreement central counterparty or its nominee to ECCN or its nominee; or
- (i) ECCN or its nominee to a clearing participant or its nominee.

(7) Condition B is that the person to whom those securities or options are agreed to be transferred under any of the agreements specified in paragraph (6) (“the relevant agreement”) is required on receipt of those securities or options to transfer traded securities or options under a matching agreement to another person or, in the case of an agreement falling within paragraph (6)(d) or (6)(e), would have been so required if the failure referred to in those paragraphs had not occurred.

(8) Condition C is that where traded securities or options which are the subject of the relevant agreement are received by a clearing participant, the agreement must be identified by the clearing participant as an agreement that has been made solely in relation to the clearing of those traded securities or options on behalf of a third party.

(9) In this regulation “matching agreement” means an agreement under which—

- (a) the traded securities or options agreed to be transferred are of the same kind as the traded securities or options agreed to be transferred under the relevant agreement; and
- (b) the number and transfer price of the traded securities or options agreed to be transferred are in total identical to the number and transfer price of the traded securities or options agreed to be transferred under the relevant agreement.

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(a) Sections 80C and 89AA of the Finance Act 1986 (c. 41) (which were inserted by section 98 and section 103 of the Finance Act 1997 (c. 16)) relate to stock lending transactions.

## **Revocation of the Stamp Duty and Stamp Duty Reserve Tax (European Multilateral Clearing Facility N.V.) Regulations 2011**

5. The Stamp Duty and Stamp Duty Reserve Tax (European Multilateral Clearing Facility N.V.) Regulations 2011(a) are revoked.

*Mark Lancaster*

*David Evennett*

8th January 2014

Two of the Lords Commissioners of Her Majesty's Treasury

### **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations revoke the Stamp Duty and Stamp Duty Reserve Tax (European Multilateral Clearing Facility N.V.) Regulations 2011 (S.I. 2011/668) (the "EMCF Regulations") and replace the EMCF Regulations with these Regulations.

The Regulations give relief from stamp duty and stamp duty reserve tax ("SDRT") to certain transfers of, or agreements to transfer, traded securities or options made in the course of trading in those traded securities or options either on a facility or over the counter. The transfers and agreements eligible for relief are those involving European Central Counterparty N.V. ("ECCN"), and its nominees, (through whom transactions on the facility are cleared) or clearing participants of ECCN and its nominees.

Regulation 1 provides for citation and commencement and effect, and regulation 2 contains definitions.

Regulation 3 prescribes ECCN as a recognised clearing house for the purposes of the relief.

Regulation 4 prescribes the circumstances in which the stamp duty and SDRT will not be charged.

Regulation 5 revokes the EMCF Regulations. The purpose of the revocation and these Regulations is to reflect the change of name of European Multilateral Clearing Facility N.V. ("EMCF") to ECCN. The change of name from EMCF to ECCN is effective from 6th January 2014.

A Tax Information and Impact Note covering this instrument will be published on the HMRC website at <http://hmrc.gov.uk/thelibrary/tiins.htm>.

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(a) S.I.2011/668, amended by S.I. 2013/504.







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