

2023 No. 1323

FINANCIAL SERVICES

The Central Counterparties (Equivalence) (United States of America) (Commodity Futures Trading Commission) Regulations 2023

<i>Made</i>	- - - -	<i>5th December 2023</i>
<i>Laid before Parliament</i>		<i>7th December 2023</i>
<i>Coming into force</i>	- -	<i>28th December 2023</i>

The Treasury, in exercise of the powers conferred by Articles 25(6) and 84a(2) of Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories(a), make the following Regulations.

Citation, commencement, extent and interpretation

1.—(1) These Regulations may be cited as the Central Counterparties (Equivalence) (United States of America) (Commodity Futures Trading Commission) Regulations 2023.

(2) These Regulations come into force on 28th December 2023.

(3) These Regulations extend to England and Wales, Scotland and Northern Ireland.

(4) In these Regulations—

“CFTC” means the Commodity Futures Trading Commission of the United States of America;

“CFTC-authorised CCP” means a CCP(b) that—

(a) is established in the United States of America,

(b) is registered as a derivatives clearing organisation with, and supervised by, the CFTC, and

(c) has either—

(i) been designated by the Financial Stability Oversight Council of the United States of America as systemically important, or

(ii) elected to become subject to the provisions of Subpart C of Part 39 of Title 17 of the United States of America Code of Federal Regulations(c);

“EMIR” means Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories.

(a) EUR 2012/648, as amended by S.I. 2018/1184, 2019/335 and 2020/646; there are other amending instruments but none is relevant.

(b) “CCP” is defined in article 2 of EUR 2012/648.

(c) 17 C.F.R. Part 39. This can be found online at <https://www.ecfr.gov/current/title-17/chapter-I>.

Equivalence

2. The Treasury specify that—

- (a) subject to regulation 3, the legal and supervisory arrangements of the United States of America, as implemented by the CFTC, ensure that CFTC-authorised CCPs comply on an ongoing basis with legally binding requirements which are equivalent to the requirements laid down in Title IV of EMIR;
- (b) CFTC-authorised CCPs are subject to effective supervision and enforcement by the CFTC on an ongoing basis;
- (c) the legal framework of the United States of America, as implemented by the CFTC, provides for an effective equivalent system for the recognition of CCPs authorised under legal regimes of other countries.

Requirements for a specified CFTC-authorised CCP

3.—(1) Regulation 2 only applies to a CFTC-authorised CCP specified in the Schedule where its internal rules and procedures include requirements equivalent to the following (but see regulation 4)—

- (a) in relation to all derivative contracts(a), at least one of the three options set out in paragraphs (a) to (c) of Article 28(1) (procyclicality) of the Regulatory Technical Standards,
- (b) in relation to derivative contracts executed on a regulated market, the requirement in Article 26(1)(b) (time horizons for the liquidation period) of the Regulatory Technical Standards, and
- (c) the requirement in Article 43(2) of EMIR (financial resources) relating to the default fund referred to in Article 42 and the other financial resources referred to in Article 43(1).

(2) In this regulation—

“regulated market” has the meaning given in Article 2(13) of MIFIR(b);

“Regulatory Technical Standards” means Commission Delegated Regulation (EU) 153/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on requirements for central counterparties(c).

Agricultural commodity derivative contracts

4.—(1) The requirements in regulation 3(1)(a) and (b) do not apply in relation to a derivative contract that meets conditions A to E.

(2) Condition A is that the contract is traded on a designated contract market, within the meaning of Part 38 of Title 17 of the United States of America Code of Federal Regulations(d).

(3) Condition B is that the contract relates to an underlying agricultural product and that contract meets one or both of the following requirements—

- (a) the product to which the contract relates is sugar, soybean oil, soybean meal, cocoa, coffee, or lumber;

(a) “derivative contract” is defined in article 2 of EUR 2012/648.

(b) EUR 2014/600, as amended by S.I. 2018/1403. “MIFIR” is defined in article 2 of EUR 2012/648.

(c) EUR 2013/153, as amended by the Technical Standards (European Market Infrastructure) (Amendment etc.) (EU Exit) (No. 1) Instrument 2019 (Bank of England) and the Bank of England Technical Standards (Consequential Amendment) (EU Exit) Instrument 2020. Copies of these instruments are available at <https://www.bankofengland.co.uk/-/media/boe/files/paper/2019/ps519-section-b-app9-emir1-april-2019.pdf> and <https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/policy-statement/2020/ps2720app-b10.pdf>.

(d) 17 C.F.R. Part 38. This can be found online at <https://www.ecfr.gov/current/title-17/chapter-I>.

- (b) the contract references the grades, prices, weights, measures or conversion factors for agricultural commodities and associated products as published by the United States Department of Agriculture.
- (4) Condition C is that the contract is offered for clearing by a CCP established in the United States of America (but see paragraph (7)).
- (5) Condition D is that, if the contract specifies a place where the underlying agricultural product is produced, that place is not in the United Kingdom.
- (6) Condition E is that—
 - (a) if the contract is physically settled, either—
 - (i) the underlying agricultural product to which it relates is coffee, or
 - (ii) the contract relates to an underlying agricultural product other than coffee and all places of delivery are outside the United Kingdom;
 - (b) if the contract is cash settled, either—
 - (i) the underlying agricultural product to which it relates is coffee or sugar, or
 - (ii) the contract relates to an underlying agricultural product other than coffee or sugar and the settlement amount is not based on prices for an underlying agricultural product for which at least one of the places of delivery is inside the United Kingdom.
- (7) Condition C does not apply in relation to a contract referred to in paragraph (4) where the majority of contracts relating to the same underlying agricultural product which are cleared by the CCP referred to in paragraph (4) are—
 - (a) cleared for counterparties established in the United Kingdom, and
 - (b) offered for clearing by a CCP authorised to provide clearing services under Article 14 of EMIR.

Dual-regulated CCPs

5. Where a CFTC-authorised CCP is also authorised by the Securities and Exchange Commission of the United States of America, these Regulations only apply in relation to the clearing services that the CCP is authorised to provide by the CFTC.

Stuart Anderson
Scott Mann

5th December 2023

Two of the Lords Commissioners of His Majesty's Treasury

SCHEDULE

Regulation 3

Specified CFTC-authorised CCPs

1. Chicago Mercantile Exchange Inc, the company registered with the Securities and Exchange Commission of the United States of America, with Central Index Key 0001103945.

2. ICE Clear Credit LLC, the company registered with the Securities and Exchange Commission of the United States of America, with Central Index Key 0001559962.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations set out the Treasury's equivalence determination in respect of the regulatory framework that applies to certain central counterparties (CCPs) that are established in the United

States of America (USA) and registered as a derivatives clearing organisation (DCO) with the Commodity Futures Trading Commission (CFTC).

These Regulations are made in exercise of the powers conferred by Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories, as retained in UK law by virtue of the European Union (Withdrawal) Act 2018 and amended by regulations made under section 8 of that Act (EMIR). Article 25(1) of EMIR provides that a CCP established overseas may only provide clearing services to clearing members or trading venues established in the United Kingdom where that CCP is recognised by the Bank of England. The Bank of England is only able to recognise a CCP where the legal and supervisory arrangements of the overseas market in which they operate have been determined, by the Treasury, as equivalent to the United Kingdom.

Regulation 2 sets out the Treasury's determination that the regulatory framework in relation to CFTC-authorised CCPs is equivalent to the United Kingdom's framework. CFTC-authorised CCPs are DCOs which have either been designated by the Financial Stability Oversight Council of the USA as systemically important or elected to become subject to the provisions of Subpart C of Part 39 of Title 17 of the USA Code of Federal Regulations.

Regulation 3 sets out the requirements that a CFTC-authorised CCP specified in the Schedule must have in its internal rules and procedures in order to fall within the determination made in regulation 2(a).

Regulation 4 sets out that some of the requirements in regulation 3 do not apply in relation to agricultural commodity derivative contracts which meet the conditions set out in this regulation.

Regulation 5 provides that, where a CFTC-authorised CCP is also authorised by the Securities and Exchange Commission of the USA, the determination only applies in relation to the clearing services they are authorised to provide by the CFTC.

References for the grades, prices, weights, measures or conversion factors for agricultural commodities and associated products as published by the United States Department of Agriculture can be found online at <https://www.ams.usda.gov/grades-standards> and in the Agricultural Handbook Number 697 dated June 1992, which can be found online at <https://www.ers.usda.gov/publications/pub-details/?pubid=41881>.

A person unable to access the law of the United States of America or the references published by the United States Department of Agriculture electronically may access them by inspection free of charge at HM Treasury, 1 Horse Guards Road, London, SW1A 2HQ.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen. A de minimis impact assessment is available from HM Treasury, 1 Horse Guards Road, London, SW1A 2HQ and is published with the Explanatory Memorandum alongside this instrument at www.legislation.gov.uk.

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