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# **EACH response to the HMT Consultation on Senior Managers & Certification Regime (Financial Market Infrastructures)**

October 2021

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## Introduction

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The European Association of CCP Clearing Houses (EACH) represents the interests of Central Counterparties (CCPs) in Europe since 1992. CCPs are financial market infrastructures that significantly contribute to safer, more efficient and transparent global financial markets. EACH currently has 19 members from 15 different European countries. EACH is registered in the European Union Transparency Register with number 36897011311-96.

EACH appreciates the opportunity to provide feedback to the HMT Consultation Paper on Senior Managers & Certification Regime (hereinafter called "The consultation").

## EACH responses

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### Question 1: Do you agree with the proposal to create a SM&CR for FMIs?

EACH welcomes the UK's intention to uphold high regulatory standards in the domain of UK CCP supervision, however, we do **not believe a SM&CR, similar to the one applicable to banks, would be appropriate** for Financial Market Infrastructures (FMIs), particularly for CCPs. **CCPs are heavily regulated** entities which are subject to the highest regulatory standards, including high standards of conduct and accountability amongst its staff. Due to their role in the financial services sector and their systemic importance, CCPs already have a solid risk, compliance and conduct culture, which is essential to ensure the efficient functioning of the FMI itself and, by extension, the market and financial stability.

Specifically, the **conflict of interest in banks**, whereby individuals are incentivised to create risk in order to stimulate short term returns, **does not exist for CCPs**. CCPs exist for the purpose of centralising and collateralising risk, and they are remunerated according to their management of collateral. They do not encounter scenarios in which the interests of their senior staff are at odds with the prudent and resilient operation of their responsibilities.

The Bank of England (BoE)'s direct supervision and application of the UK EMIR<sup>1</sup> requirements ensure that CCPs already comply with strict Senior Manager requirements particularly with regards to the composition of "Senior Management and the Board" and must notify National Competent Authorities (NCAs) as soon as any changes to its management takes place. In addition, under EMIR, CCPs must follow specific guidelines on "Conflicts of Interest" and have robust organisational arrangements and policies to prevent potential conflicts of interest to arise. Consequentially, **CCPs are already subject to Senior Managers requirements under EMIR.**

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<sup>1</sup> UK EMIR Article 27 & 31 which include requirements for the composition of "Senior Management and the Board" and mandates CCPs to notify NCAs as soon as any changes to its management - [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) \(No. 2\) Regulations 2019 \(legislation.gov.uk\)](#)

Furthermore, we would like to stress that **CCPs differ significantly from banks in terms of business model, risks and role in the market**. We appreciate the need to address conduct risk in banks, however the same should not apply to CCPs as conduct risk does not arise in the same way as **CCPs act as risk managers and not risk takers**.

Crucially, many activities that take place elsewhere in the financial sector, and which carry potential for harm to consumers, corporates and market stability, do not form part of FMI activities. For example, **CCPs are not involved in the management of retail deposits or investments**; they carry out only **minimal trading activity for the purposes of liquidity management**; they do **not deliver investment advice**; and they are **not involved in the issuance of securities**. There is, therefore, little opportunity or incentive, for CCP staff to engage in any 'high-risk' taking activities, which the SM&CR sought to originally address.

More importantly, there is **little scope for CCPs to deviate from prudent, resilient operations**:

- When CCPs implement new risk models, they are required under UK EMIR to seek formal prior approval from the BoE under Article 49 of UK EMIR. Before seeking that approval, models must be approved by the executive 2<sup>nd</sup> line risk function; a risk committee that includes industry experts and independent non-executive directors; and the Board;
- When CCPs seek to clear a new asset class, they are required under UK EMIR to seek formal prior approval from the BoE under Article 15 of EMIR;
- In practice, the BoE requires CCPs to seek approval before making any material changes to products or services;
- CCPs must carry out regular business continuity, disaster recovery and default management testing under UK EMIR;
- Under UK EMIR, CCPs must have independent risk, compliance and audit functions dedicated to the entity and reporting to the Board or Board committees;
- In practice, the BoE requires CCPs to seek approval before appointing new directors or executives;
- Under the BoE's Supervisory Statement for Operational Resilience of CCPs of March 2021, CCPs must undertake actions to achieve a level of operational resilience sufficient to meet the BoE's expectations; and
- CCPs must make extensive public disclosures as to their rulebooks, risk models, operational reliability and the investment of their resources.
- Key individuals are already subject to the Bank of England's consent as regards their fitness and propriety

Therefore, before a CCP introduces a new product, service or system, it would already need to have been reviewed and approved by internal risk and compliance functions, the risk committee and the Board, and the BoE. In many cases, approvals would also be needed from overseas regulators.

As such, we kindly encourage HMT to **consider the existing regulations and controls already in place when defining the application of a SM&CR to CCPs**. This would be appropriate in light of (i) existing requirements formalised under UK EMIR and (ii) the low level of risks brought onto the retail market by CCPs.

**Question 2: Are there any specific considerations for FMIs (as a whole or in part) which you think should be accounted for, to ensure the effectiveness of the proposed SM&CR when applied to FMIs?**

EACH generally believes that it would be crucial to ensure that the SM&CR **takes into account the specific characteristics of each type of FMI falling under the scope of the SM&CR**. In addition, we are of the opinion that it would also be important to consider to what extent the existing regulatory regimes applying to the relevant FMI (i.e. EMIR Articles 27 and 31) already contain requirements having similar objectives to those intended as part of the SM&CR.

We would also like to put forward the following considerations:

- **Senior Managers Regime**
  - We believe that under such framework a formal application to the BoE for the assessment of an individual to perform a SMF should **take less than 3 months to be completed**. While we are of the opinion that it would be important for the BoE to have adequate time to assess an SMF application, we think that the proposed 3 months is a very lengthy period. This is particularly relevant when considering that an application would be submitted to the BoE once the CCP's internal governance and recruitment process was completed. At that point, a review process of potentially 3 months feels excessive, as that person would have already undergone a solid scrutiny process. Therefore, we would kindly **suggest shortening such review period to e.g. two months or even 45 days to expedite the onboarding process**.
  - The proposed annual assessment of the fitness and propriety of individuals appears to be high and disproportionate to the intrinsic level of risk e.g. misconduct risk. Consequently, we would respectfully suggest **at least a bi-annual assessment**, supported by ad-hoc notification to the BoE as and when necessary
- **Certification regime**
  - We are of the opinion that **additional clarity** should be brought into the kinds of circumstances which could be deemed to cause **"significant harm to the firm or its users"**. Alternatively, we respectfully suggest that a clearly defined perimeter of the application of the Certification Regime could be provided.
  - Just as in the Senior Manager Regime, we believe that the annual frequency of the assessment seems high, and would suggest at least a bi-annual assessment.

**Question 3: Are there any other considerations on the proposals outlined in this consultation which should be brought to our attention?**

EACH believes that a regime similar to banks would have limited application to CCPs under EMIR and as such we believe that its benefits would be significantly limited. Instead, we believe that the **BoE's existing close supervision activity**, combined with the existing powers to require investigations and make directions (under the Financial Services and Markets Act 2000<sup>2</sup>) **provide sufficient assurance**.

Finally, we are of the opinion that the potential **practical scope of application of the present proposal with regard to third-country CCPs** (and FMIs) (i.e. non-UK CCPs and FMIs) is unclear. In particular, we note that the proposed regime would apply in "*respect to UK CCPs, recognised clearing houses and CSDs, regulated by the Bank of England under Part 18 and Schedule 17A of the Financial Services and Markets Act 2000*".

Therefore, should the HMT anyway opt for a regime, EACH would recommend clarifying whether the above would also include third country CCPs, recognised by the Bank of England pursuant the current post-Brexit Temporary Recognition Regime, introduced by the Central Counterparties (Amendments, etc., and Transitional Provision) (EU Exit) Regulations 2018 as amended, or pursuant the final UK recognition regime (which is presently not yet effective).

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<sup>2</sup> <https://www.legislation.gov.uk/ukpga/2000/8/contents>