

# Chicago on Thames

Blog post by Partner Stephen Adams, 15 June 2016

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Another ‘what if’ Brexit case study yesterday. ESMA has finally announced that the Chicago Mercantile Exchange (CME) has been recognised as a qualified central counterparty for EU banks and investment firms. This means that EU counterparties can use the CME to clear derivatives trades and in doing so meet their EU obligations under the European Market Infrastructure Regulation without incurring much the higher capital charges for using non-qualified CCPs. Large EU-based banks are subject to the EMIR clearing obligation from June 21.

The CME is of course in precisely the position that UK-based market infrastructure like LCH would find itself if the UK was to leave the EU after a vote next Thursday. Unless the UK remained inside the EEA, London market infrastructure would become third country infrastructure from the perspective of EMIR. Without a similar qualification to that just approved by ESMA for the CME, EU counterparties would face higher capital charges for clearing in on ‘non-qualified’ CCPs in London.

The question for the UK and for EU businesses that use London for derivatives clearing would be whether it would be possible to agree something like the ESMA CME approval for the UK - and when. Once out of the EU it would be straightforward enough for the UK to apply for equivalence. The similar US process took four years and a protracted standoff over EU and US approaches. The Swiss failed their first EMIR assessment and attempts to initiate another after revisions have been essentially ignored as the issue has fallen foul of the wider breakdown in EU-Swiss political relations.

The UK system is obviously closely aligned with that of the EU, but equivalence would still require the UK to commit to maintaining something like EMIR and the range of supporting rules in areas such as market abuse and AML. The UK would also need its own version of the third country regime that just approved CME for UK-based bank and investment firms.

The trickier question would be whether it would be possible to agree it - or a transitional regime like it - during an exit negotiation to avoid UK CCPs falling out of the EMIR regime at all. This would require some kind of expedited migration of the UK to the third country EMIR regime, based in turn on some fairly robust commitments from the UK to maintain current rules and reciprocal recognition for EU infrastructure. Would the UK do this? Would the rest of the EU support it? We may find out after next week.