



EMIR: the path to mandatory clearing
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C L I F F O R D
C H A N C E

EMIR: the path to mandatory clearing

EMIR envisages a sequence of steps before market participants become subject to an obligation to clear a class of OTC derivatives

Adoption of Level 2 measures

- The Commission must adopt all the regulatory technical standards contemplated by EMIR

Authorisation or recognition of a CCP

- A CCP must apply for and be granted authorisation or recognition under EMIR to clear a class of OTC derivatives (and existing CCPs must submit their applications within 6 months after adoption of specified Level 2 measures)

Completion of clearing mandate process

- The Commission must endorse a proposal made by ESMA, after public consultation, to impose a clearing obligation with respect to a class of OTC derivatives cleared by an authorised or recognised CCP

Phase-in of clearing mandate

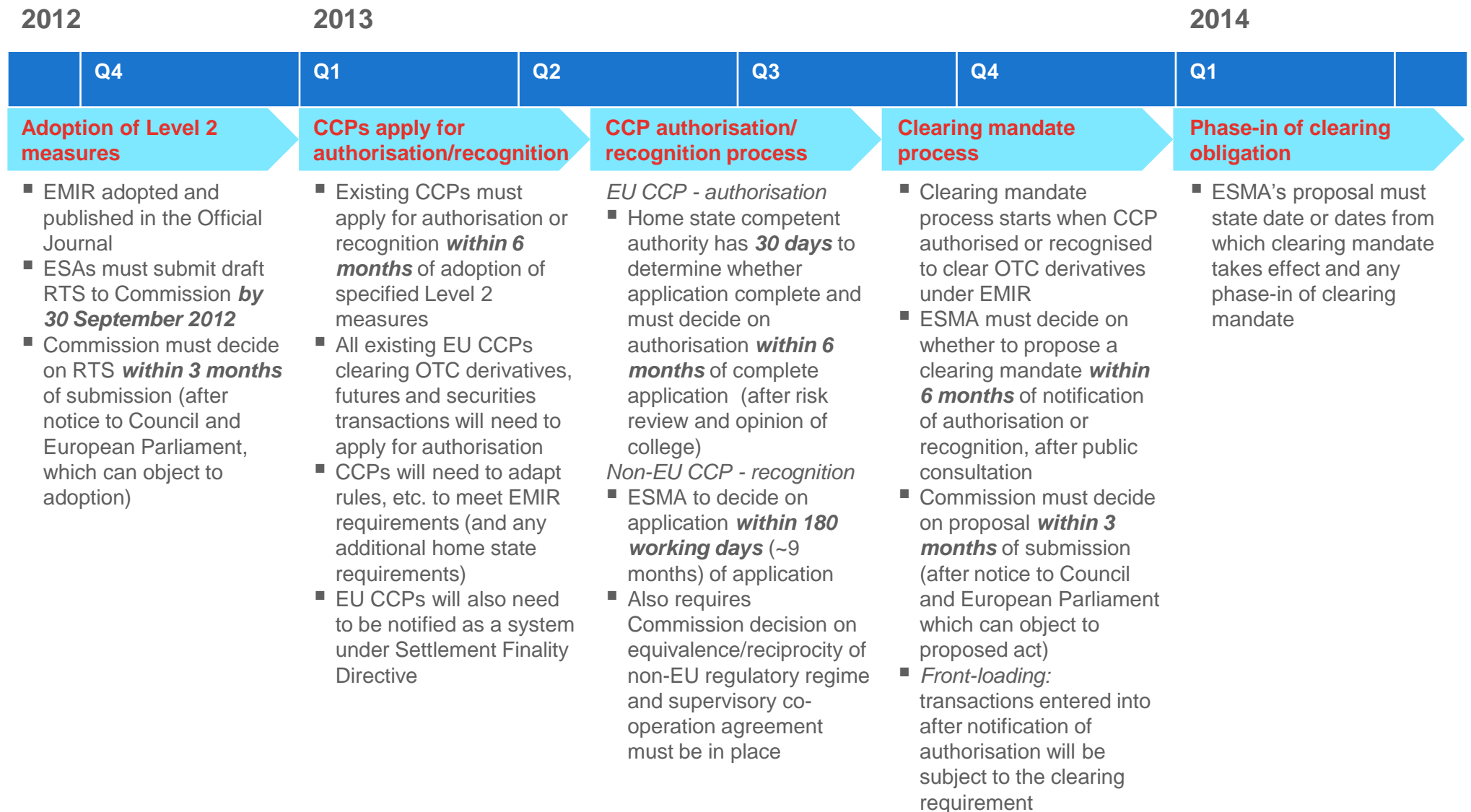
- The mandate will specify an effective date(s) and any phase-in of the obligation

The illustrative timeline below makes assumptions about the timing of these steps: the actual path could be shorter (or longer)

- Much will depend on how quickly CCPs can prepare and submit their applications, the time taken for the review of these and the grant of authorisation/recognition and the time taken for consultation and decision on the clearing mandate process itself
- It seems unlikely that a clearing mandate could come into effect before Q3 2013 and delays in any one stage could result in the clearing mandate only coming into effect later in 2014
- The large number of CCPs applying for authorisation (including for futures and securities clearing) may affect the timeline
- There may be some bunching of authorisation processes as regulators seek to ensure comparable outcomes for different CCPs



The path to mandatory clearing: illustrative timeline



Illustrative timeline: key assumptions

The illustrative timeline assumes:

- EMIR endorsed by the Council in the form of the text published by the Council on 11 April 2012 and published in the Official Journal in August 2012
- Commission adopts all RTS under EMIR at end 2012
- CCPs' home states designate competent authorities promptly (and do not impose additional measures on their CCPs which affect the process)
- CCPs take 4 months to prepare applications for authorisation/recognition after adoption of RTS
- Competent authorities/ESMA take 4 months to approve CCP applications (and members of colleges do not require mediation by ESMA of a decision on authorisation taken by the CCP's home state regulator)
- ESMA/Commission take 4 months to complete clearing mandate process
- Neither the Council nor the European Parliament objects to any RTS or a proposed act adopting the clearing mandate

Glossary

- **CCP:** Central counterparty
- **College:** college of supervisors and central banks appointed to facilitate supervisory tasks under EMIR in relation to a CCP
- **Commission:** the European Commission
- **Competent authority:** the national authority designated by a Member State as responsible for duties under an EU regulation or directive
- **Council:** Council of Ministers
- **EMIR:** the proposed Regulation of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories
- **ESA:** European Supervisory Authority
- **ESMA:** the European Securities and Markets Authority
- **Home state:** the Member State in which a CCP is established
- **Level 2 measure:** delegated or implementing act (including an RTS) adopted by the Commission under powers conferred by an EU regulation or directive
- **Member State:** member state of the EU
- **OTC:** over-the-counter
- **RTS:** regulatory technical standards proposed by an ESA and adopted by the Commission under powers conferred by an EU regulation or directive

This document is not intended to be comprehensive or to provide legal advice. For more information, speak to one of the Clifford Chance contacts shown below.

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