

Corporate & Financial Weekly Digest

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European Commission Publishes Proposed OTC Derivatives Regulation

On September 15, the European Commission published its proposed regulation on over-the-counter (OTC) derivatives, central counterparties and trade repositories. The proposed regulation encompasses all OTC derivatives and is applicable to financial and non-financial firms who either use OTC derivatives or have large positions in OTC derivatives. It has two key aims: (1) increased transparency, and (2) reduced counterparty and operational risk.

The proposed regulation seeks to implement the objectives of the September 26, 2009, G20 Summit, which outlined compulsory clearing of standardized OTC derivative contracts and reporting of OTC derivatives contracts to trade repositories. (An earlier version of this proposal was described in the [June 18](#) edition of *Corporate and Financial Weekly Digest*.)

The main elements of the proposed regulation are:

- mandatory central counterparty (CCP) clearing of OTC derivatives, subject to pre-defined eligibility criteria;
- risk mitigation—where OTC contracts are not eligible for CCP clearing, the proposed regulation requires the counterparties to the contract to put in place certain risk mitigation techniques;
- CCPs—the proposed regulation sets out the authorization and supervision requirements for CCPs established in EU member states including conduct of business, organizational and prudential requirements;
- interoperability—where there is an interoperability arrangement between two or more CCPs that involves a cross-system execution of transactions, the relevant CCPs will need prior approval from their national regulator contingent on satisfactory risk management procedures; and
- reporting obligation to trade repositories—detailed transactional information on OTC derivatives contracts will be required to be reported to trade repositories. The data held by trade repositories will be made available to national regulatory authorities. Trade repositories will be required to publish aggregate positions by class of derivatives on the contracts reported to them. The European Securities Markets Authority will be responsible for the registration and surveillance of trade repositories.

There will be certain exemptions from the clearing requirement, for example, where OTC derivatives are used for hedging business risk. However, in such cases firms will be required to hold more capital against the contracts.

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