



Bank of Russia

The Central Bank of the Russian Federation



**DECEMBER
2016**

**Final
report**

**CONSULTATION PAPER
ON MANDATORY CENTRAL
CLEARING OF STANDARDISED
OTC DERIVATIVES**

MOSCOW

CONSULTATION PAPER ON MANDATORY CENTRAL CLEARING OF STANDARDISED OTC DERIVATIVES*

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* This is an unofficial translation for information purposes only. If there are any discrepancies between the original Russian version and this translated version, the original Russian version shall prevail

ABBREVIATIONS

- BCBS – Basel Committee on Banking Supervision
- BIS – Bank for International Settlements
- ICMA – International Capital Market Association
- IOSCO – International Organisation of Securities Commissions
- ISDA – International Swaps and Derivatives Association
- FSB – Financial Stability Board
- G20 – The Group of Twenty
- CFTC – U. S. Commodity Futures Trading Commission
- ESMA – European Securities and Markets Authority
- HKMA – Hong Kong Monetary Authority
- MAS – Monetary Authority of Singapore
- SFC – Securities and Futures Commission
- EMIR – European Market Infrastructure Regulation No. 648/2012, dated July 4th, 2012, on over-the-counter (OTC) derivatives, central counterparties, and trade repositories
- RTS – Regulatory Technical Standard
- Dodd-Frank Act – Dodd-Frank Wall Street Reform and Consumer Protection Act
- FX Forward – Forex forward
- FX Swap – Forex swap
- IRS – Interest rate swap
- OIS – Overnight index swap
- CDS – Credit default swap
- RUB – Russian rouble
- USD – US dollar
- EUR – Euro
- HKD – Hong Kong dollar
- JPY – Japanese yen
- CC – Central counterparty
- NCC – Bank National Clearing Centre JSC
- IFRS – International Financial Reporting Standards
- CC RF – The Civil Code of the Russian Federation
- TC RF – The Tax Code of the Russian Federation
- Law on Banks – Federal Law No. 395–1, dated December 2nd, 1990, ‘On Banks and Banking Activities’
- Law on the Bank of Russia – Federal Law No. 86-FZ, dated July 10th, 2002, ‘On the Central Bank of the Russian Federation (Bank of Russia) ’
- Law on Clearing – Federal Law No. 7-FZ, dated February 7th, 2011, ‘On Clearing, Clearing Activities, and the Central Counterparty’
- Law on the Securities Market – Federal Law No. 39-FZ, dated April 22nd, 1996, ‘On the Securities Market’
- Law on Organised Trading – Federal Law No. 325-FZ, dated November 21st, 2011, ‘On Organised Trading’
- Ordinance on Reporting to Trade repository – Bank of Russia Ordinance No. 4104-U, dated August 16th, 2016, ‘On Submitting Information on OTC Contracts to a Repository, on Persons Submitting Such Information, on the Procedure, Composition, Form and Terms of Submitting the Information to the Repository, on Additional Requirements to the Procedure to Maintain by the Repository the Contract Register, on the Procedure and Terms of Submitting by the Repository Information, as well as on the Procedure, Composition, Form and Terms of Submitting by the Repository the Contract Register to the Bank of Russia’

INTRODUCTION

In response to the challenges brought by the financial crisis of 2008, the G20 leaders have reached an agreement regarding the main areas for reforming the OTC derivatives market in order to enhance the financial market stability¹. It was decided that:

- Standardised OTC derivatives should be subject to central clearing.
- OTC derivatives should be reported to trade repositories.
- Standardised OTC derivatives should be traded on exchanges or electronic trading platforms².
- Non-centrally cleared OTC derivatives should be subject to higher capital requirements.
- Non-centrally cleared OTC derivatives should be properly collateralized.

According to the information presented in the FSB Report³ as of end of June 2016, the requirement for mandatory central clearing came into effect in most FSB member-states (including Australia, the EU, India, China, Korea, the USA, and Japan).

The purpose of the first edition of this consultation paper published on July 1st, 2016 (hereinafter referred to as the First Edition) was to present approaches to implementing the obligations assumed by Russia within the framework of the G20 in terms of phasing in the requirement for mandatory central clearing of standardised OTC derivatives for broad public discussion with financial market participants.

The approaches presented for public consultation are based on the results of the research on the current state of the Russian derivatives market and the relevant experience of the USA, the EU, and Asia (Singapore, Hong Kong), taking into account the recommendations and standards developed by IOSCO and ISDA.

This edition of the consultation paper reveals the Bank of Russia's view on the issues outlined in the First Edition and final approaches of the Bank of Russia to the introduction of mandatory central clearing of standardised OTC derivatives in view of the on-site consultations with professional community, as well as comments and suggestions received by email svc_derivatives@cbr.ru before September 15th, 2016.

The outcome of the public consultations were preliminary considered by the Derivatives Board (DB).⁴

The respective regulatory acts of the Bank of Russia will be prepared on the basis of this edition of the consultation paper.

¹ *Leaders' Statement, The Pittsburgh Summit, September 24-25, 2009, https://g20.org/wp-content/uploads/2014/12/Pittsburgh_Declaration_0.pdf; Leaders' Statement, The Cannes Summit, Cannes, November 4th, 2011, <http://www.g20.utoronto.ca/2011/2011-cannes-declaration-111104-en.html>*

² *In cases where the use of an electronic trading platform is applicable.*

³ *OTC Derivatives Market Reforms, Eleventh Progress Report on Implementation, Financial Stability Board, August 2016. <http://www.fsb.org/wp-content/uploads/OTC-Derivatives-Market-Reforms-Eleventh-Progress-Report.pdf>.*

⁴ *DB was established to elaborate the derivatives market development strategy upon the initiative of three associations – The Association of Russian Banks (ARB), Russian National Association of Securities Market Participants (NAUFOR), and National Securities Market Association (NSMA). The additional information is available at <http://www.spfi.info/>.*

Key Propositions on the Introduction of Mandatory Central Clearing of Standardised OTC Derivatives

This consultation paper contains the following views of the Bank of Russia on approaches to implementing the decisions adopted by the G20 on submitting standardised OTC derivatives for central clearing:

1. to restrict the list of standardised OTC derivatives subject to central clearing to the following interest rate swaps (IRSs):
 - Overnight index swap denominated in RUB for a period from 1 week to 1 year.
 - Basis swap denominated in RUB for a period from 1 week to 5 years.
 - Fixed-to-floating swap denominated in RUB for a period from 1 week to 5 years.
2. to phase in introduction of the requirement for mandatory central clearing with due regard to the category of the financial market participants, who make derivative contracts;
3. to establish the following categories of the financial market participants:
 - Category 1 (the requirement for mandatory central clearing will be effective from January 1st, 2018)
 - credit institutions, professional securities market participants licensed for dealer and/or brokerage activities and/or securities management, as well as organisations licensed as a management company for investment funds, unit investment funds, or non-governmental pension funds;
 - Category 2 (the requirement for mandatory central clearing will be effective from January 1st, 2019)
 - other participants of the OTC derivative market incorporated in the Russian Federation, which are part of the group that overpasses the threshold value of RUB 30 billion on single currency IRS denominated in RUB or any foreign currency.
4. to introduce the requirement for mandatory central clearing only for derivatives made between Russian counterparties;
5. not to apply the mandatory central clearing requirement to intra-group derivatives and derivatives with certain entities;
6. to establish the possibility of using both the legal mechanism stipulated by Part 12, Article 4 of the Law on Clearing (novation) and the open-offer system for the purposes of submitting standardised OTC derivatives for central clearing;
7. to establish the obligation to submit a transaction for central clearing not later than the initial transaction date ('T0') when using the legal mechanism stipulated by Part 12, Article 4 of the Law on Clearing (novation), which implies the conclusion of an initial transaction between the parties.
8. To establish the approach according to which the information on standardised OTC derivatives submitted to central clearing shall be reported to the trade repository only by the CCP.

SECTION A. CENTRAL CLEARING OF STANDARDISED OTC DERIVATIVES

The proposals set forth in this consultation paper were based on the results of the research on the advanced international practices and aim at creating an appropriate regulatory environment ensuring the predominance of the economic incentives over the administrative ones in terms of submitting standardized OTC derivatives for central clearing.

Among the most important reasons justifying the viability of clearing with a CCP as compared to the traditional system of bilateral transactions the foreign regulators outline the following ones¹:

- Systemic risk reduction in the financial market as a result of the reduction in numbers of bilateral transactions between major participants of the financial market (avoiding ‘domino effect’).

- Credit risk reduction for market participants because of its redistribution to the CCP, which meets higher requirements to its risk management system.

- Increased netting efficiency due to increased number of participants involved and the use of clearing, which, in turn, should minimize the amount of required collateral and, as a consequence, reduce the costs and facilitate market liquidity.

- More effective risk and collateral management through the use of standardised mechanisms, taking into account the prospective adoption of mandatory margining of OTC derivatives.

Taking into consideration the specifics of the Russian banking regulation and the public discussions outcomes, the following impact of central clearing on the calculation of statutory ratios can be distinguished:

- A reduction of pressure on the capital of the banks entering into OTC derivatives transactions, since the OTC derivatives cleared with CCP are

not included in calculations of the risk of change in credit claim value as a result of the deterioration of the counterparty’s credit quality²;

- A possible increase in the liquidity coverage ratio due to the fact that the submission of standardised OTC derivatives for central clearing should allow credit institutions to include the aforementioned derivatives in the net outflow (inflow) value when calculating the index of short-term liquidity and the corresponding statutory ratio (subject to a number of restrictions)³.

With the adoption of the requirement for central clearing, the role and the importance of the quality of the CCP’s risk management system increases.

To date, taking into account the amendments made to the Law on Clearing by Federal Law No. 403-FZ, dated December 29th, 2015, ‘On Amending Certain Laws of the Russian Federation,’ a statutory framework was created which provides for ensuring the proper functioning of a CCP in line with the international principles⁴, primarily those referred to its risk management system.

Comments on Section A in the follow-up to the consultations

The market participants note that the interest rate on collateral deposited with the CCP should be at the market level to make central clearing attractive. The Bank of Russia believes that the risks of the CCP arising from the investment of deposited collateral should be offset by the respective interest rate. The interest rates may be adjusted depending on current financial market situation, considering the risk-management system parameters of the CCP.

Comments on this consultation paper received by the Bank of Russia also mention that the

¹ See, for example: *Market Practice and Regulatory Policy, ICMA*. <http://www.icmagroup.org/Regulatory-Policy-and-Market-Practice/short-term-markets/Repo-Markets/frequently-asked-questions-on-repo/27-what-does-a-ccp-do-what-are-the-pros-and-cons/>; *The Role of Central Counterparties, European Central Bank*. <https://www.ecb.europa.eu/pub/pdf/other/rolecentralcounterparties200707en.pdf?734973e95c26ba824f205887f53c819c>

² Clause 2 of Annex 8 to the Bank of Russia Instruction No. 139-I, dated December 3rd, 2012, ‘On Banks’ Statutory Ratios.’

³ Clauses 3.5.2 and 4.8 of the Bank of Russia Regulation No. 421-P, dated December 3rd, 2015, ‘On Calculation of the Liquidity Coverage Ratio (‘Basel III’).’

⁴ Principles for financial market infrastructures, CPSS-IOSCO, 2012 <http://www.bis.org/cpmi/publ/d101a.pdf>.

introduction of mandatory central clearing for OTC derivatives will increase the concentration of the market participants' exposure to the CCP. Such concentration may have an impact on banks' compliance with the maximum risk per borrower or group of interrelated borrowers (N6 ratio). The Bank of Russia will take this into account when amending the related regulations.

The market participants outline that key obstacles, which may hinder the submission of OTC derivatives for central clearing, are as follows:

a) Russian CCP is not recognised abroad. It may unreasonably double the regulatory pressure when compliance with the Russian requirements for mandatory central clearing of OTC derivatives is not reckoned as compliance with similar requirements in a foreign jurisdiction;

b) Russian rules do not conform with the foreign ones when it comes to categories of derivatives subject to mandatory central clearing. It may result in regulatory arbitrage;

c) Some market participants are not prepared to comply promptly with the new regulation.

The Bank of Russia took into account the above mentioned barriers when preparing this edition of the consultation paper by limiting the list of instruments to be affected by the requirement for mandatory central clearing at the first and the second stage. The Bank of Russia also exempted cross-border derivatives from this requirement and set a reasonable timeframe for adjusting necessary systems to the new regulation.

A.1. OTC Derivatives Subject to Mandatory Central Clearing

According to the recommendations of IOSCO, the approach used by regulators in determining individual derivatives classes/types for the purposes of imposing a requirement for mandatory central clearing of such transactions can be based on the following principles:

– The 'bottom-up' principle (the regulator adopts the list of derivatives that are already accepted for clearing by an authorised or recognised CCP).

– The 'top-down' principle (the regulator independently determines the list of derivatives that are subject to mandatory central clearing, while there are no CCPs authorised to clear such derivatives).

The Bank of Russia will establish the primary list of instruments that are subject to mandatory central clearing on the basis of the 'bottom-up' principle.

In choosing this principle as the basis for the purpose of determining the categories of derivatives subject to central clearing, the Bank of Russia established the criteria set forth in the FSB report 'Implementing OTC Derivatives Market Reforms'⁵ with regard to the involvement of a CCP that clears this category of OTC derivatives and the CCP's ability to process the anticipated number of transactions and to manage the risks arising as a result of clearing of the corresponding category of OTC derivatives.

NCC, as the national systemically important CCP,⁶ currently accepts interest rate and FX derivatives for central clearing.⁷

In order to avoid regulatory arbitrage, the Bank of Russia deems it necessary to synchronise the stages of central clearing implementation with other jurisdictions, inter alia in terms of the categories of instruments.

In the international practice⁸, as a rule, the derivatives that are subject to central clearing at the first stage are interest rate derivatives. Moreover, in some jurisdictions at the first stages it is suggested that clearing should be implemented with regard to certain credit derivatives, in particular CDS. Using the example of certain jurisdictions Table 1 shows information on derivatives which are already subject to mandatory central clearing or should be so before the end of 2017.

⁵ Recommendation 5, FSB's report *Implementing OTC derivatives market reforms, 2010*, <http://www.fsb.org/2010/10/fsb-report-on-implementing-otc-derivatives-market-reforms/>.

⁶ Based on the analysis of the activities of all financial market infrastructure organisations operating in Russia, the Bank of Russia recognised NCC as a national systemically important central counterparty under the Bank of Russia Ordinance No. 3341-U, dated July 25th, 2014, 'On Recognising Financial Market Infrastructures as Systemically Important.' Information on financial market infrastructure organisations, which are recognised by the Bank of Russia as systemically important, is published on the official site of the Bank of Russia at the address: http://www.cbr.ru/analytics/default.aspx?Prtid=fin_stab&ch=ITM_6542#CheckedItem.

⁷ Information is presented on the official site of NCC at the address: <http://www.nkcbank.ru/viewCatalog.do?menuKey=275>.

⁸ See, for example: https://www.esma.europa.eu/sites/default/files/library/public_register_for_the_clearing_obligation_under_emir.pdf, <http://www.cftc.gov/idc/groups/public/newsroom/documents/file/federalregister112812.pdf>, <http://www.hkma.gov.hk/media/eng/doc/key-information/press-release/2015/20150930e7a1.pdf>.

Table 1

International practice

EMIR* (EU)		Dodd-Frank Act** (USA)		Consultation paper*** (Hong Kong)
Interest rate derivatives (IR)	Credit derivatives (CD)	Interest rate derivatives (IR)	Credit derivatives (CD)	Interest rate derivatives (IR)
Basis swap (EUR, GBR, JPY, USD begins from June 21 st , 2016)	Index CDS begins from February 9 th , 2017	Basis swap (EUR, GBR, JPY, USD begins from September 9 th , 2013)	Index CDS	Basis swap (HKD, EUR, GBR, JPY, USD begins from July 1 st , 2017)
Fixed-to-float swap (EUR, GBR, JPY, USD begins from June 21 st , 2016) (NOK, PLN, SEK begins from February 9 th , 2017)		Fixed-to-float swap (EUR, GBR, JPY, USD begins from September 9 th , 2013)		Fixed-to-float swap (HKD, EUR, GBR, JPY, USD begins from July 1 st , 2017)
Forward rate agreement (EUR, GBR, USD begins from June 21 st , 2016)		Forward rate agreement (EUR, GBR, USD begins from September 9 th , 2013)		

* The information has been published on the official site of ESMA at the address: <https://www.esma.europa.eu/regulation/post-trading/otc-derivatives-and-clearing-obligation>.

** The information has been published on the official site of CFTC at the address: <http://www.cftc.gov/ucm/groups/public/@otherit/documents/ifdocs/clearingrequirementcharts.pdf>.

*** Consultations and further consultation on introducing mandatory clearing and expanding mandatory reporting, the HKMA, SFC, 2016. [http://www.hkma.gov.hk/media/eng/doc/key-information/press-release/2016/Consultation Conclusions eng.pdf](http://www.hkma.gov.hk/media/eng/doc/key-information/press-release/2016/Consultation%20Conclusions%20eng.pdf).

This approach is due, among other things, to the fact that interest rate derivatives are the most popular in the international financial market (see Figure 1).

The data derived from the trade repository reports indicates that the Russian interest rate derivative market is still evolving. However, the aforementioned instruments are of potential interest to both credit institutions and other participants of the financial market; in comparison to other derivatives, interest rate derivatives require little capital coverage of risks related to them.

Considering the insufficiency of active financial market participants and the participants' heterogeneity with regard to credit quality, the Bank of Russia presumes that the concentration of OTC interest rate derivatives at a CCP with a high level of creditworthiness and a certain degree of standardisation of traded instruments it accepts for clearing will make it possible to increase the liquidity of the corresponding financial market segment.

Taking into account the aforementioned approaches, the international experience in implementing the requirement for mandatory central clearing, and specifics of the Russian interest rate derivatives market, originally the Bank of Russia by its regulation will establish a list of certain interest rate swaps (IRS), which shall be subject

to mandatory central clearing. The requirement for mandatory central clearing will apply only to standardised derivatives traded under the terms and conditions of either a master agreement (single contract) or a separate agreement that is not a part of a mixed agreement (for example, a loan agreement where an IRS is an integral part of it is a mixed agreement).

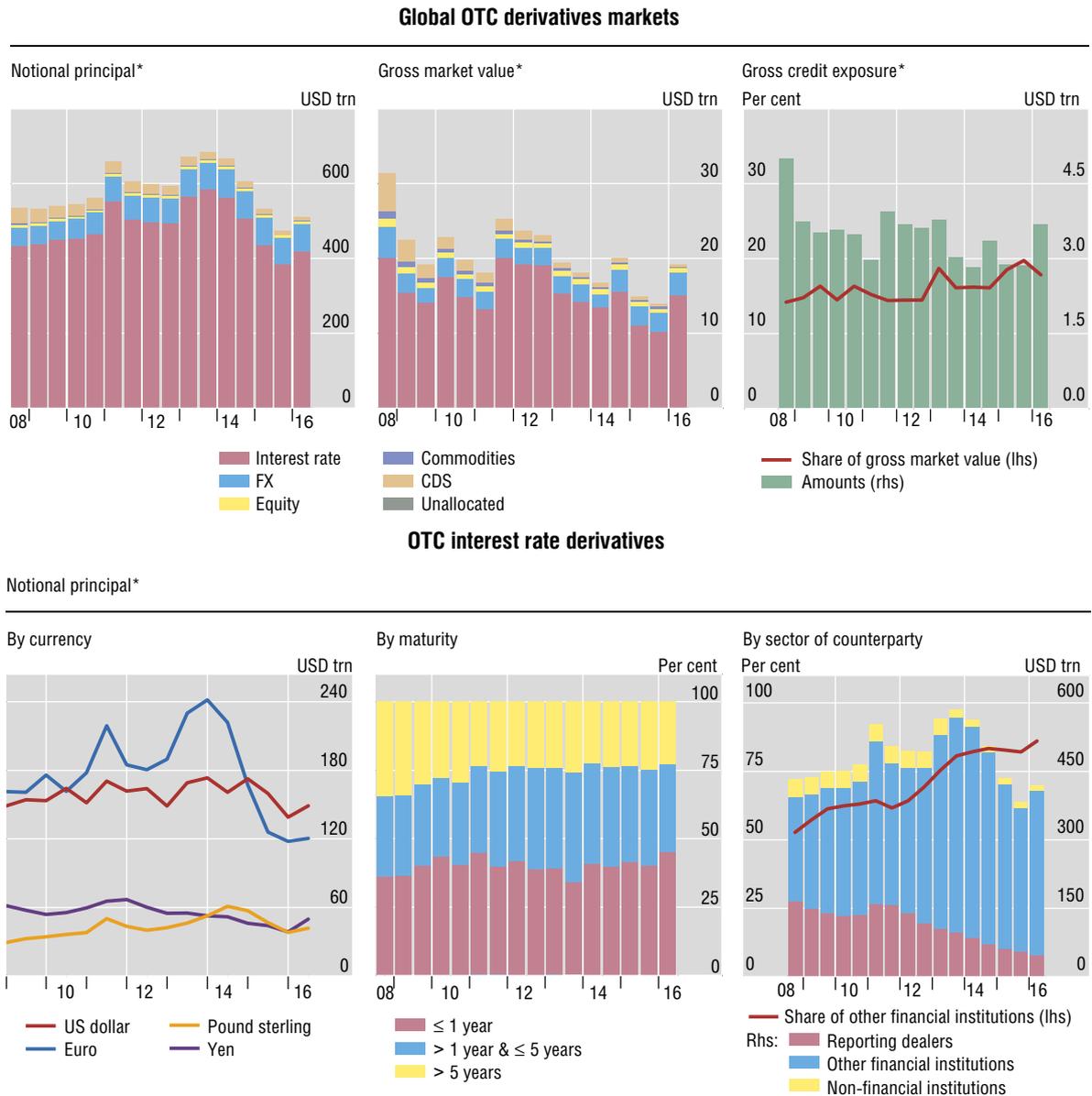
For the purposes of this consultation paper, 'IRS' means the OTC derivatives according to the terms and conditions of which:

- The parties have agreed to make periodical and/or one-time payments to each other depending on the change in an interest rate.
- The amounts in cash due shall be calculated in accordance with:
 - A single notional amount.
 - Floating interest rates or fixed and floating interest rates agreed upon by the parties.

The following swaps will be included in the list of IRSs subject to mandatory central clearing:

- Basis swap corresponding to the specifications stipulated in Table 2. For the purposes of this consultation paper, 'basis swap' means an IRS according to the terms and conditions of which:
 - The first party calculates the amount in cash payable to the second party based on

Figure 1



* At half-year end (end-June and end-December). Amounts denominated in currencies, other than the US dollar are converted to US dollars at the exchange rate prevailing on the reference date.

Note. The graphs have been published in the statistical release of the Bank of International Settlements (BIS) on OTC derivatives as of the Q2 2016.

Statistical release 'OTC derivatives statistics at end-June 2016,' Monetary and Economic Department, BIS, November 2016. http://www.bis.org/publ/otc_hy1611.pdf.

More detailed statistical information on OTC derivatives is available on the official BIS site at the address: <http://www.bis.org/statistics/derstats.htm>.

the notional amount and a floating interest rate.

- The second party calculates the amount in cash payable to the first party in the same currency based on the notional amount and another floating interest rate.
 - Fixed-to-floating swap corresponding to the specifications stipulated in Table 3. For the purposes

of this consultation paper, 'fixed-to-floating swap' means an IRS according to terms and conditions of which:

- The first party calculates the amount in cash payable to the second party based on the notional amount and a fixed interest rate.
- The second party calculates the amount in cash payable to the second party based on

Table 2

Basis swap

Foreign currency	Floating interest rate	Term	Constant notional amount
RUB	MOSPRIME	1 week to 5 years.	Yes

Table 3

Fixed-to-floating swap

Foreign currency	Floating interest rate	Term	Constant notional amount
RUB	MOSPRIME	1 week to 5 years.	Yes

Table 4

Overnight index swap

Foreign currency	Floating interest rate	Term	Constant notional amount
RUB	RUONIA	1 week to 1 year.	Yes

the notional amount and a floating interest rate.

– Overnight index swap corresponding to the specifications stipulated in Table 4. For the purposes of this consultation paper, ‘overnight index swap’ means a fixed-to-floating swap for which the floating interest rate is calculated on the basis of the overnight interest rate index.

Taking into account the international practice and IOSCO⁹ recommendations, the Bank of Russia will establish a requirement for mandatory central clearing only for transactions that have been concluded after:

a) The requirement for mandatory central clearing for such transactions has come into effect, or

b) The threshold value of such transactions has been exceeded after the requirement for mandatory central clearing has come into effect (for transactions one of the parties to which is a participant belonging to Category 2).

As the mechanism of central clearing and the improvement of CCP technological systems evolve, the Bank of Russia may expand the range of instruments subject to mandatory central clearing, taking into account the alignment of regulation with that of foreign jurisdictions and the recognition of at least one Russian CCP abroad.

Comments on Section A.1 in the follow-up to the consultations

Most commentators of the First Edition were positive about the Bank of Russia’s suggestion that only interest rate swaps (IRS) would be subject to mandatory central clearing in the first place. At the same time, the financial market participants asked which instruments should be regarded as standardised ones and whether the new requirements would apply to swap options (swaption) and cross-currency transactions. The Bank of Russia suggests using the below criteria to determine standardised derivatives:

– A derivative’s compliance with the terms and conditions to be set by the Bank of Russia based on the established contractual practice;

– A derivative is traded under the terms and conditions of either a master agreement (single contract) or a separate agreement that is not a part of a mixed agreement.

The Bank of Russia assumes that swaptions and other instruments with unconventional parameters, which complicate risk calculation for a CCP, should not be subject to mandatory central clearing. Maturity of instruments is another criterion for standardisation. The Bank of Russia believes that the duration of derivatives indicated in Tables 2, 3 and 4 reflects the practice of transactions currently entrenched in the Russian financial market.

The First Edition suggested that the list of instruments subject to mandatory central clearing should be supplemented with certain FX derivatives

⁹ Principles for financial market infrastructures, CPSS-IOSCO, 2012. <http://www.bis.org/cpmi/publ/d101a.pdf>.

(FX Forward and FX Swap). The financial market participants did not support this suggestion mostly because of the fact that the central clearing of such instruments was not widely practiced internationally; and since the lack of requirements for mandatory central clearing of FX derivatives in other jurisdictions may result in regulatory arbitrage, which may negatively affect the liquidity of the Russian derivative market.

The financial market participants were also concerned about the consequences of incompliance with the requirements for mandatory central clearing. The following standard liability measures are likely to be introduced for a law violation:

- the Bank of Russia will send instructions to eliminate such violation;
- failure to meet these instructions will trigger administrative liability.

A.2. Categories of the OTC Derivatives Market Participants Subject to the Requirement for Mandatory Central Clearing

A.2.1. Classification of OTC Derivatives Market Participants According to Their Capacity

During the consultations, the financial market participants supported phased implementation of the requirement for mandatory central clearing of standardised OTC derivatives depending, inter alia, on the category of the OTC derivatives market participants. The Bank of Russia will follow this approach.

Two categories of market participants will be introduced:

- **Category 1:** credit institutions and professional securities market participants licensed for dealer and/or brokerage activities and/or securities management, as well as organisations licensed as a management company for investment funds, unit investment funds, or non-governmental pension funds.

- **Category 2:** other entities - participants of the OTC derivatives market. These are entities incorporated in the Russian Federation, which trade standardised derivatives on the OTC market and not belonging to Category 1.

A.2.2. The Additional Criteria of Classification Depending on the Volume of Traded OTC Derivatives

The requirement for mandatory central clearing will apply to the financial market participants belonging to Category 2 only if a certain threshold amount is reached. An entity may be subsumed to Category 2 if the group¹⁰ the entity belongs to has reached RUB 30 billion in gross notional value for IRSs (hereinafter referred to as the 'Threshold Value')¹¹;

The Threshold Value is calculated for outstanding positions of the group for single currency IRSs denominated in RUB or any foreign currency as of end of quarter during three consecutive quarters. When the Threshold Value is reached, the entity shall be assigned to Category 2 from the first day of the month following the latest of the three consecutive quarters when the Threshold Value was reached.

If the entity (the group it belongs to), after exceeding the Threshold Value, does not exceed the Threshold Value for three consecutive quarters (as of end of each quarter), the requirement for mandatory central clearing becomes inapplicable to the OTC derivatives of this entity specified in the Tables 2,3, 4 and made from the first day of the month following the latest of the three quarters.

When applying this approach each party to the transaction shall have reliable information on the counterparty's category and on the exceedance/non-exceedance of the Threshold Value by the counterparty for the purposes of making the decision on transfer of the OTC transaction to central clearing.

An optimal mechanism for obtaining the mentioned information by the parties is by using the standard notification forms developed by a self-regulatory organisation, which will be exchanged at the moment the transaction is executed, allowing the parties to receive such information in a timely manner. An example of the implementation of such approach is the EMIR Classification Letter

¹⁰ For the purposes of this Section A.2.2. the concept of 'control' as defined in IFRS 10 'Consolidated Financial Statements', is suggested to be used to identify a group.

¹¹ Included in calculation are all OTC IRSs including those traded between members of one group (each derivative is calculated once).

Table 5

**The classification of participants of the OTC derivative market for phasing
in the requirement of mandatory central clearing**

Stage	Derivative classification by category of parties		Interest rate derivatives
	Party 1	Party 2	Overnight index swap, Basis swap, Fixed-to-floating swap
1 stage	Category 1	Category 1	01.01.2018
2 stage	Category 1	Category 2	01.01.2019

developed by ISDA.¹² The Bank of Russia believes that financial market participants shall not be responsible for their counterparties' false or incorrect statements of exceedance of the Threshold Value.

The stages of the phasing in of the requirement for mandatory central clearing of OTC derivatives proposed by the Bank of Russia, depending on the participant category with due regard to the Threshold Value are set forth in Table 5.

Comments on Section A.2 in the follow-up to the consultations

The Bank of Russia has received suggestions to increase the Threshold Value from RUB 10 billion to RUB 30-50 billion for Category 2. These suggestions were explained by the additional financial burden, which may have been caused by mandatory central clearing for transactions of Russian real sector corporations, which do not use OTC derivatives actively enough and do not participate in central clearing. Mandatory central clearing was also expected to reduce demand of such corporations for risk hedging through OTC derivatives. Given these suggestions, the Bank of Russia adjusts its approach to calculating the Threshold Value and its volumes in this consultation paper;

- a) The Threshold Value has been increased;
- b) The Threshold Value shall be calculated on a group basis.

The above mentioned approach should allow to assess more prudently the concentration of risks of the entity involved in OTC derivative transactions. According to the Ordinance on Reporting to Trade Repository, the set of entities reporting on their OTC derivatives to the repository has been expanded since November 1st, 2016. The Bank of Russia may adjust the approach to calculating the Threshold

Value and its volumes when sufficient statistics are collected by the repository.

During the consultations, the financial market participants also questioned the expedience of the Threshold Value (upper limit) for total amount of OTC derivatives per clearing member, which a CCP may admit to clearing to avoid excessive exposure of the CCP to some clearing members. After additional research, the Bank of Russia intends to enable the possibility for CCPs to establish the limits for admission to clearing for large standardised OTC derivatives subject to mandatory central clearing in their internal rules. This should provide an exception from the general requirement for mandatory central clearing in circumstances when CCP refuses to accept a derivative for clearing due to the excessive exposure associated with such derivative.

The financial market participants were especially interested in application of requirements for mandatory central clearing to standardised OTC derivatives to which one of the parties is a foreign entity. To avoid double regulatory pressure on the foreign counterparties of the Russian financial market participants and to maintain liquidity in the Russian market, the Bank of Russia does not intend to apply the requirement for mandatory central clearing to foreign entities until the outlook on the mutual recognition of CCPs between Russia and foreign jurisdictions becomes clear.

A.3. Exceptions from the General Requirement for Mandatory Central Clearing of OTC Derivatives

The Bank of Russia will establish the following exceptions from the general requirement of mandatory central clearing of OTC derivatives:

- Intra-Group Derivatives
- Derivatives with certain entities

¹² EMIR Classification Letter, ISDA, July 13th, 2015. <https://assets.isda.org/media/1bbeae9d-2/c222ed2b.doc>.

A.3.1. Intra-Group Derivatives

This exception is based on the fact that the risks associated with executing an Intra-Group Derivative arise centrally within one group, allowing parties to such derivative transaction to organise appropriate management of such risks.

Most jurisdictions find it reasonable to exclude intra-group transactions from the general requirement for mandatory central clearing.

In the Russian legal framework, all of the following conditions should be met simultaneously for the application of the exception based on the 'Intra-Group Derivatives' criterion:

a) Parties to a derivative should fall in the same 'group' as this term defined for the purposes of central clearing. The concept of 'control' as defined in IFRS 10 'Consolidated Financial Statements', is suggested to be used to identify a group.

b) The activities of the parties to a derivative presuppose that IFRS financial statements are consolidated completely.¹³

c) Parties to a derivative have given the Bank of Russia a notice of application of the exception for Intra-Group Derivatives in the form established by the Bank of Russia before entering into a derivative.

A.3.2. Derivatives with Certain Entities

This category will include derivatives with the Bank of Russia, the Russian Federation, Russian regions and municipalities.

Comments on Section A.3 in the follow-up to the consultations

The financial market participants that commented on the First Edition welcomed the exclusion of Intra-Group Derivatives from the general requirement for mandatory central clearing. The Bank of Russia also received suggestions to apply this exclusion to entities, which do not prepare financial statements in compliance with the IFRS, but could make up a consolidated group according to the approaches stipulated in the IFRS. Given that this consultation paper proceeds from non-application of the requirement for mandatory central clearing of cross-border derivatives, and that

¹³ In accordance with clause 2 of International Financial Reporting Standards (IFRS) 10, 'Consolidated Financial Statements' (enacted in the Russian Federation by Order No. 217n of the Ministry of Finance of the Russian Federation, dated December 28th, 2015).

the requirement for preparing consolidated financial statements in compliance with Federal Law No. 208-FZ, dated July 27th, 2010, 'On Consolidated Financial Statements' is applied to a wide range of financial market participants, the Bank of Russia finds no substantial reason to change the approach set forth in the First Edition. However, for the purpose of application of the exclusion to Intra-Group Derivatives, in this consultation paper the Bank of Russia takes into account the comment on inexpediency of the requirement for common (centralised) risk management system approved in the group.

With regard to recommendations to supplement the list of entities, to which the requirement for mandatory central clearing will not apply, with international financial organisations, foreign central banks and other foreign public entities, we confirm that in the short term the requirement for mandatory central clearing will not apply to derivatives with any foreign entities.

To avoid legal disputes, the issue regarding the exclusion of hedging derivatives from calculation of the Threshold Value and (or) non-application of the requirement for mandatory central clearing to hedging derivatives remains to be considered after clear criteria for classification derivatives as the hedging ones are identified. This decision stems from the lack of a consolidated view on the definition of hedging derivatives in the professional community.

A.4. The Mechanism of Submission of Standardised OTC Derivatives for Central Clearing

30. To appropriately implement the requirement for mandatory central clearing of standardised OTC derivatives, there must be legal certainty in respect of the mechanism of submission for clearing of such derivatives to a CCP, covering the cases of indirect clearing¹⁴, including determination of the appropriate legal framework for such submission and standardisation of the related documentation.

¹⁴ For the purposes of this consultation paper, 'indirect clearing' shall mean clearing carried out by a CCP in respect of a derivative to which one or both parties are not clearing members. In such cases, the derivative is referred to as a client-cleared derivative.

For the purposes above, submission of a transaction for central clearing is understood as:

– The procedure that involves the termination of an obligation between parties to the initial transaction and the creation between each party to the initial transaction and the CCP of a new obligation with the same subject matter and manner of performance as the original obligation (Figure 2), or

– The procedure whereby the CCP automatically becomes the counterparty of each party to the transaction as soon as the parties agree on the terms and conditions of the transaction in question. In this event, there is no initial transaction (Figure 3).

Legend to Figure 2:

1 – The initial transaction entered into between Party A and B (hereinafter referred to as the ‘transaction’ (1)).

2 – The parties send targeted requests to the CCP or, upon the agreement of the parties, one party sends a joint request.

3 – The CCP matches the requests.

4 – Two transactions are concluded: between the CCP and each party A and B, and the initial transaction (1) is terminated at the same time.

Legend to Figure 3:

1 – The parties have agreed on the terms and conditions on which they are prepared to enter into the transaction.

2 – Each party sends a targeted request to the CCP.

3 – The CCP matches the requests.

4 – Two transactions are concluded: between the CCP and each party A and B.

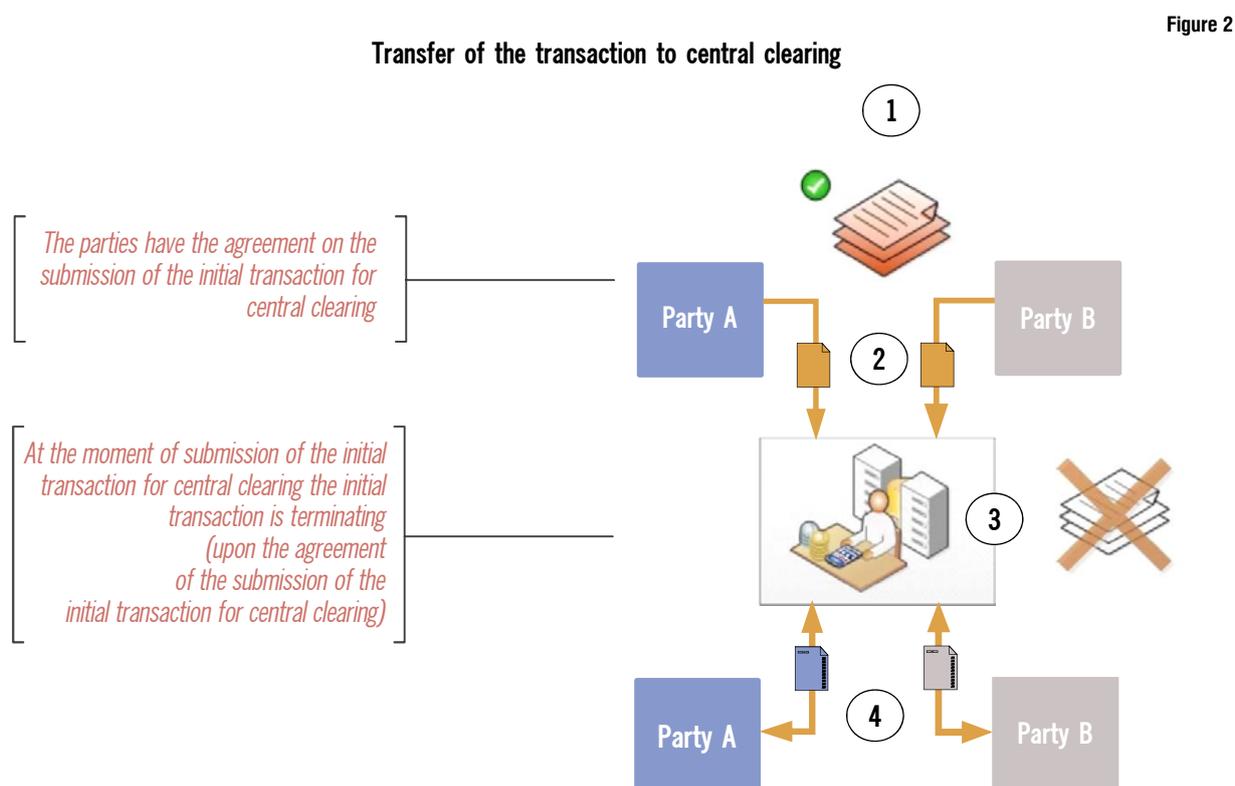
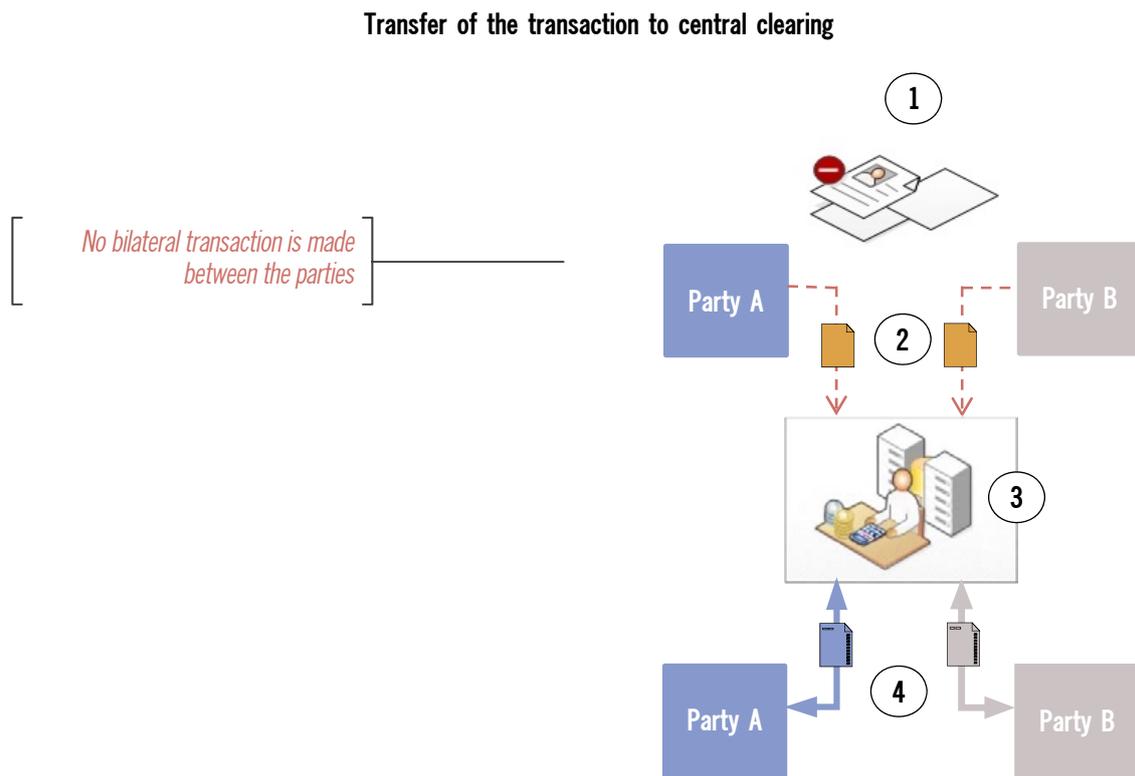


Figure 3



A.4.1. The Legal Framework for Submission of Transactions to Central Clearing

In respect of the legal device underlying the procedure of submitting a transaction for central clearing the Principles for Financial Market Infrastructure developed by CPSS-IOSCO¹⁵ establish that the CCP becomes a party to transactions with each party to the initial transaction through novation, open offer or a similar legal device.¹⁶ The first two of these are most widely used in the international practice. It should be noted, however, that individual elements of the above legal devices may vary from jurisdiction to jurisdiction.

In the international practice the above legal devices for submitting transactions for central clearing may also be applied in transactions made through electronic platforms, where transactions can be executed electronically. Currently, the Bank of Russia is engaged in creating the concept of functioning of such organisations. One of the

objectives of this work is to facilitate the procedure of transactions submitting for central clearing.

A.4.1.1. Submission of a Transaction for Central Clearing through the Legal Device Provided for by the Clearing Law (Undefined Legal Device – ‘Novation’)

The concept of ‘novation’ is broader in the international practice than in the Russian law¹⁷ because this device includes, among other things, replacement of a contract with several new contracts whose parties may be different from those of the original contract.

At the same time the Russian legislation provides for an undefined legal device for the purposes of submission of a transaction for central clearing, which is similar to novation if used in the international context.

According to Clause 12, Article 4 of the Law on Clearing rules may stipulate the cases when an obligation existing between the contracting parties,

¹⁵ Principles for financial market infrastructures, CPSS-IOSCO, 2012. <http://www.bis.org/cpmi/publ/d101a.pdf>.

¹⁶ Principles for financial market infrastructures, CPSS-IOSCO, 2012, page 9. <http://www.bis.org/cpmi/publ/d101a.pdf>.

¹⁷ For the purposes of the Russian law (Article 414 of the CC RF), the governing criteria of novation as a method for extinguishing of obligations are as follows: parties to the initial and substitute transactions must be the same; transformation of the initial obligation to a new type of the obligation.

neither of whom is a CCP, is extinguished through replacing such obligation by new obligations between each of the contracting parties and a CCP. The new obligations must have the same subject matter and manner of performance as the initial contract missing the CCP.

It should be noted here that, when the device presuming the execution of the initial transaction between the parties is applied, the transaction should be submitted for central clearing not later than the day of execution of the initial transaction (T0).

Non-compliance with the requirement for timely submission of the transaction for central clearing may have administrative legal consequences. In this case such non-compliance must not be the ground to hold the transaction invalid.

We assume that in order for the legal device in question to function properly, the following conditions should first be met:

- The agreement of the parties to submit the initial transaction for central clearing does not automatically terminate the initial transaction.

- The moment of the initial transaction termination and of two new transactions execution between each party to the initial transaction and the CCP is the moment when the CCP notifies the parties to the initial transaction that the transaction has been accepted for central clearing. In this case a request sent by the authorized party may be considered as an offer, and the notification sent by the CCP may be considered as the acceptance.

- If the parties to the initial transaction have not received from the CCP the notification of acceptance of the transaction for central clearing, as a general rule the initial transaction is not terminated. The parties may agree otherwise.

- The invalidity of the agreement of the parties to submit the initial transaction for central clearing should not cause the restoration of the initial transaction.

- The obligations of the parties under transactions executed by each party to the initial transaction and the CCP should not depend on obligations arising out of the initial transaction and the parties' agreement to submit the initial transaction for central clearing; as a result, the invalidity of obligations under the initial transaction and/or agreement in question should not affect the validity of obligations arising out of the transactions

executed by each party to the initial transaction and the CCP¹⁸.

A.4.1.2. Submission of a Transaction for Central Clearing through an Open Offer

In the international practice the open offer system is a legal device that involves automatic interposition of a CCP between the contracting parties as soon as the buyer and the seller agree on the terms and condition of the transaction.^{19 20}

We assume, however, that the legal device described in Part 1, Article 19 of the Law on Organised Trading²¹, which is an analogue to the open offer system, and used in organised trading (regulated markets) can also be applied in terms of submission of OTC derivatives for central clearing, provided that each request for a transaction addressed to a CCP will incorporate the information on the CCP's counterparty under the 'opposite' transaction.

A.4.1.3. Submission of Derivatives for Central Clearing in the Event of Indirect Clearing

Special features of participants' interaction during indirect clearing are presented in Figure 4.

The following are widely used models for interaction of clearing members and clearing members' clients when a client's transaction is

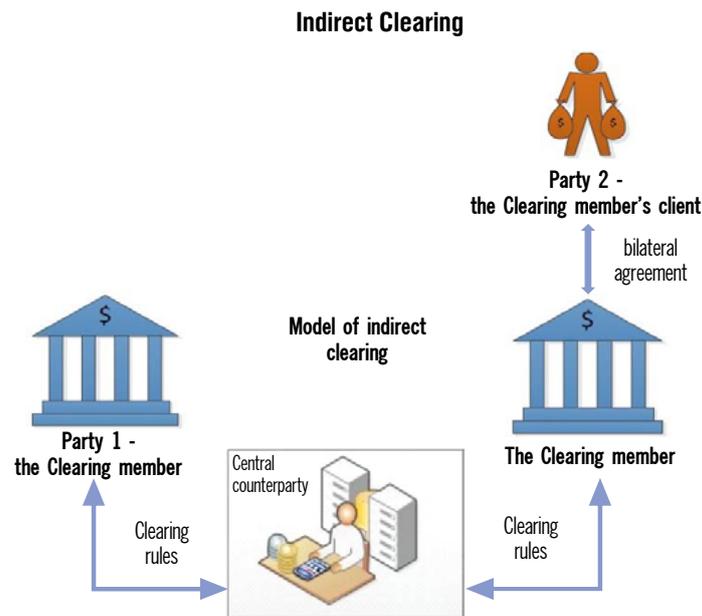
¹⁸ A similar approach is taken, for example, in Germany, where the 'abstract novation' (Abstrakte Novation) has been adopted and, by way of illustration, directly stipulated in the clearing rules of Eurex Clearing AG (http://www.eurexchange.com/blob/exchange-de/4188-139212/115098/50/data/clearing_conditions_de.pdf_ab-2014_02_10.pdf), to achieve the described legal effect. For more detail, see Philipp J. Gergen, *Rechtsfragen der Regulierung außerbörslicher derivativer Finanzinstrumente*. Pages 67–68.

¹⁹ *Principles for financial market infrastructures*, CPSS-IOSCO, 2012, page 9. <http://www.bis.org/cpmi/publ/d101a.pdf>.

²⁰ In the Russian law offer and acceptance under Articles 432, 435, 438 of CC RF are nothing more than a manner of contract execution, which involves no mechanism for automatic interposition of a third party (CCP) between the parties to the contract.

²¹ In accordance with Part 1, Article 19 of the Law on Organised Trading, unless otherwise required by this Federal Law, the CCP enters into a contract with each trading participant whose registered opposite requests have been found by the trading organiser to match each other. In this case no request need be submitted to the CCP, and each of the above contracts is deemed executed at the moment the trading organiser records a match between requests by making an entry on the execution of contracts with the CCP in the contracts register.

Figure 4



submitted for central clearing: the agency model and the principal-to-principal model.²²

The agency model is used, for example, in the USA, Canada, and other jurisdictions²³ and assumes that once the transaction has been accepted for central clearing, the clearing member is not an independent party to the transaction in its relationships with the CCP, but rather acts as the client's agent and the guarantor of the client's obligations to the CCP under the transaction.

The latter, the principal-to-principal model, is widely used in EU countries (England, Austria, and others)²⁴ and assumes that once the transaction has been accepted for central clearing, the clearing member enters into two symmetric transactions: 1) one transaction is between the clearing member and the clearing member's client (contains the terms of the initial transaction); 2) the second transaction is between the clearing member and the CCP (contains the opposite position of the clearing member in respect of the first transaction).

Taking into consideration the above, we suppose that the principal-to-principal model of transaction is

the most acceptable one in terms of submission of the client's transactions for central clearing within the Russian legal framework and the existing business practice.

However, we assume that, in terms of the Russian regulation, the mechanism described in Clause 12, Article 4 of the Law on Clearing is not applicable to the submission of a client's transaction for central clearing. This finding is based on the fact that this rule allows only a party to the initial transaction to become a party under the new obligation arising after the transaction has been accepted for central clearing. Therefore, for the purposes of submitting a client's transaction for central clearing the existing provisions of the above Article make the commission model (Article 990 of CC RF) inapplicable to relations between the clearing member and the clearing member's client. At the same time, the relationship cannot be structured pursuant to the agency model (Article 971 of CC RF) for this purpose either, because the CCP must not assume the credit risk associated with persons that are not clearing members, as stated in Clause 1, Article 3 of the Law on Clearing.

Taking into consideration the above, we suppose that the existing provisions of Clause 12, Article 4 of the Law on Clearing should be amended to enable their application to the submission of the client's transactions to central clearing through novation.

²² It should be pointed out, however, that both models are used in some jurisdictions at the same time.

²³ Published on the ISDA official website at http://www.isda.org/docproj/stat_of_clear_fcm.html.

²⁴ Published on the ISDA official website at http://www.isda.org/docproj/stat_of_clearing_members_reliance.html.

For the meantime the existing legal framework enables the submission of the client's transactions to central clearing through an open offer.

A.4.2. The Standard Documentation Facilitating the Submission of Derivatives for Central Clearing

We believe that the relevant standard documentation for the submission of a transaction for central clearing must be drafted with active participation of self-regulatory financial market organisations with regard to:

- Contracts setting up the legal relationship of the parties that submit individual transactions for central clearing.
- Contracts and other documentation setting up the legal relationship between a clearing member and the clearing member's client arising from the submission of the client's transaction for central clearing.

Comments on Section A.4 in the follow-up to the consultations

The financial market participants that commented on the First Edition welcomed the Bank of Russia's suggestion to enshrine in Russian law both legal devices for submitting transactions for central clearing because it allows more flexibility in transaction structuring. In addition, they mentioned significant aspects, which will be considered when the respective regulation will be drafted, including:

- Requirements for relations between a clearing member and a client in indirect clearing;
- Mechanism for transmitting collateral to CCP in indirect clearing;
- Applicability of close-out netting to transactions initially made under a master agreement (single contract) and partially submitted to central clearing.

SECTION B. THE REQUIREMENTS ON COLLATERAL FOR NON-CENTRALLY CLEARED STANDARDIZED OTC DERIVATIVES

With reference to the international standards and recommended methodologies, including the provisions of Basel III¹ developed by BCBS, and margin requirements for non-centrally cleared OTC derivatives² developed by BCBS in conjunction with IOSCO, the Bank of Russia is evaluating the possibility of introducing collateral requirements in respect of non-centrally cleared OTC derivatives.

Specific proposals will be put forward for public discussion in another consultation paper of the Bank of Russia.

Comments on Section B in the follow-up to the consultations

During the consultations, the financial market participants suggested that appropriately collateralized derivatives should be exempted from the requirement for mandatory central clearing. The Bank of Russia believes that as a general rule non-centrally cleared OTC derivatives should be collateralised (margin should be exchanged by the parties), which is in line with the current international practice. Central clearing is considered to be the primary risk mitigating mechanism for standardised OTC derivatives, which accords with the agreements achieved at G20 summit in Pittsburgh in 2009. Where central clearing of an instrument is technically possible and does not trigger excessive risk taking by the CCP, collateral should not be a substitute for central clearing.

¹ *Basel III: A global regulatory framework for more resilient banks and banking systems*, BCBS, 2011. <http://www.bis.org/bcbs/basel3.htm>.

² *Margin requirements for non-centrally cleared derivatives*, BCBS, the IOSCO Board, 2015. <http://www.bis.org/bcbs/publ/d317.pdf>.

SECTION C. REPORTING OF CENTRALLY CLEARED STANDARDISED OTC DERIVATIVES TO A TRADE REPOSITORY

This section contains the position of the Bank of Russia on providing information on centrally cleared standardised OTC derivatives to a trade repository.

The results of the analysis of foreign laws suggest that the transactions submitted for central clearing are not exempted from the requirement to provide information to the trade repository.

For example, Article 9 of EMIR¹ imposes the following requirements in pursuance of the G20 resolution regarding provision of information on standardised OTC derivatives to a trade repository:

- Counterparties and the CCP should provide for the details of the derivative they have executed, as well as any changes to or termination of the derivative, to be submitted to the trade repository. Information on the executed derivative should be provided to the trade repository on or before the business day following the day of its execution, modification, or termination.

- Counterparties or the CCP, which are obligated to provide information on derivatives to the trade repository, may delegate the reporting of the details of the derivative in question to another entity.

- Counterparties or the CCP should provide for the details of derivatives to be submitted without duplication.

ESMA's Final Report, dated November 13th, 2015, 'Review of the Regulatory and Implementing Technical Standards on Reporting under Article 9 of EMIR'² indicates that if the executed contract has been submitted for central clearing, the information should be provided to the trade repository both on the termination of the contract in question and the execution of the new contracts with a CCP.

The Dodd-Frank Act³ also includes provisions requiring that information on each swap contract (that has or has not been cleared) should be provided to the authorised trade repository (swap data repository). If the swap contract has been cleared, information on the contract is provided to the repository in real time in accordance with Section 727 of the Dodd-Frank Act. The Dodd-Frank Act contains no direct indication as to who should provide information on the cleared swap contract to the repository. However, it establishes the requirement that information should be provided to the repository unilaterally. Therefore, this document indirectly offers an alternative approach to the provision of information to the trade repository – that is, with the consent of the parties: by the counterparty or CCP.

It should be pointed out that the current version of Clause 1, Article 15.8 of the Law on the Securities Market allows the Bank of Russia to determine the list of persons obligated to provide information to the trade repository. Therefore, applicable laws allow information on standardised OTC derivatives to be provided to the trade repository, including when they are transferred to central clearing either by the or by the CCP, in the event the responsibility in question is established by the Bank of Russia regulation.

In addition, one should take into account the tendency existing in foreign practice where information on a standardised OTC derivative is provided to the trade repository unilaterally.

Given the positive comments on the respective suggestion of the First Edition, the Bank of Russia will enshrine in a regulation an approach, where information on standardised OTC derivatives transferred to central clearing is provided to the

¹ Article 9 of Regulation (EU) No 648/2012 of the European Parliament and of the Council, dated July 4th, 2012, on OTC derivatives, central counterparties, and trade repositories. <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015R2205&from=EN>.

² Final Report – Review of the Regulatory and Implementing Technical Standards on reporting under Article 9 of EMIR, ESMA/2015/1645. https://www.esma.europa.eu/sites/default/files/library/2015/11/2015-esma-1645_-_final_report_emir_article_9_rts_its.pdf

³ This document is available at <https://www.sec.gov/about/laws/wallstreetreform-cpa.pdf>

trade repository by the CCP alone⁴, is deemed to be the most effective (Figure 5, Figure 6).

Legend to Figure 5:

1 – The initial transaction is entered into between parties A and B (hereinafter referred to as the 'transaction' (1)).

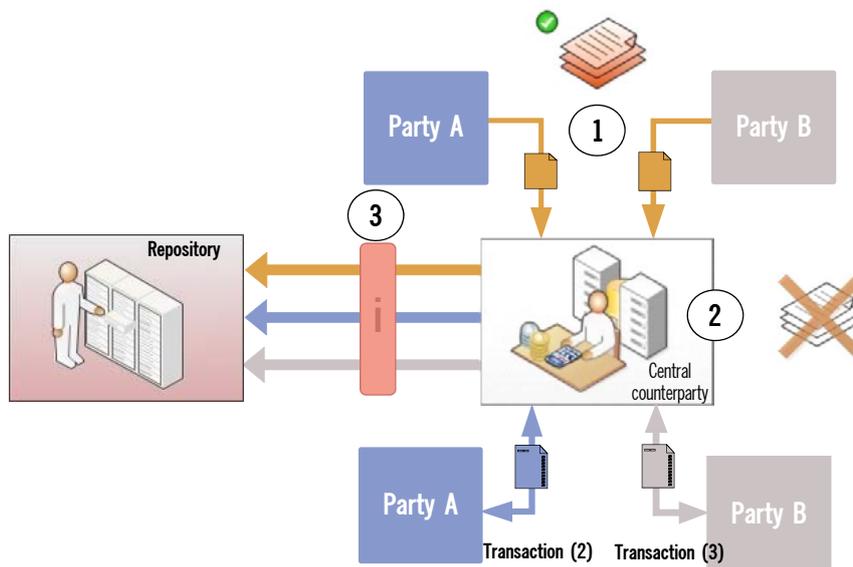
2 – Transaction (1) is transferred to central clearing (transaction (1) is terminated and, at

the same time, two transactions (2) and (3) are entered into between the CCP and parties A and B, respectively).

3 – The CCP provides information to the trade repository on the execution and termination of transaction (1) and the execution of transactions (2) and (3).

Provision of information to the trade repository regarding a transaction moved to central clearing under the system described in Section A.4.1.1. of the Report (novation)

Figure 5



⁴ If a transaction subject to be transferred for central clearing has not been accepted by CCP, the parties thereto must provide information on execution of such transaction to the repository by their own as per the procedure established by the Ordinance on Reporting to Repository.

Legend to Figure 6:

1 – Transactions (2) and (3) are entered into between the CCP and counterparties A and B, respectively.

2 – The CCP provides information to the trade repository on the execution of transactions (2) and (3).

Comments on Section C in the follow-up to the consultations

The Bank of Russia was asked about the CCP's accountability in case of violation of the requirement for reporting to the repository. If the CCP's obligation to unilaterally submit information on derivatives to a repository is enshrined in a regulation, CCPs will be liable for violation of the said obligation in compliance with the effective administrative law.

Figure 6

Provision of information to the trade repository in the case of a transaction transferred to central clearing under the system described in Section A.4.1.2. of the Report (open-offer system)

