

# Japanese Central Counter Party (CCP) under Construction

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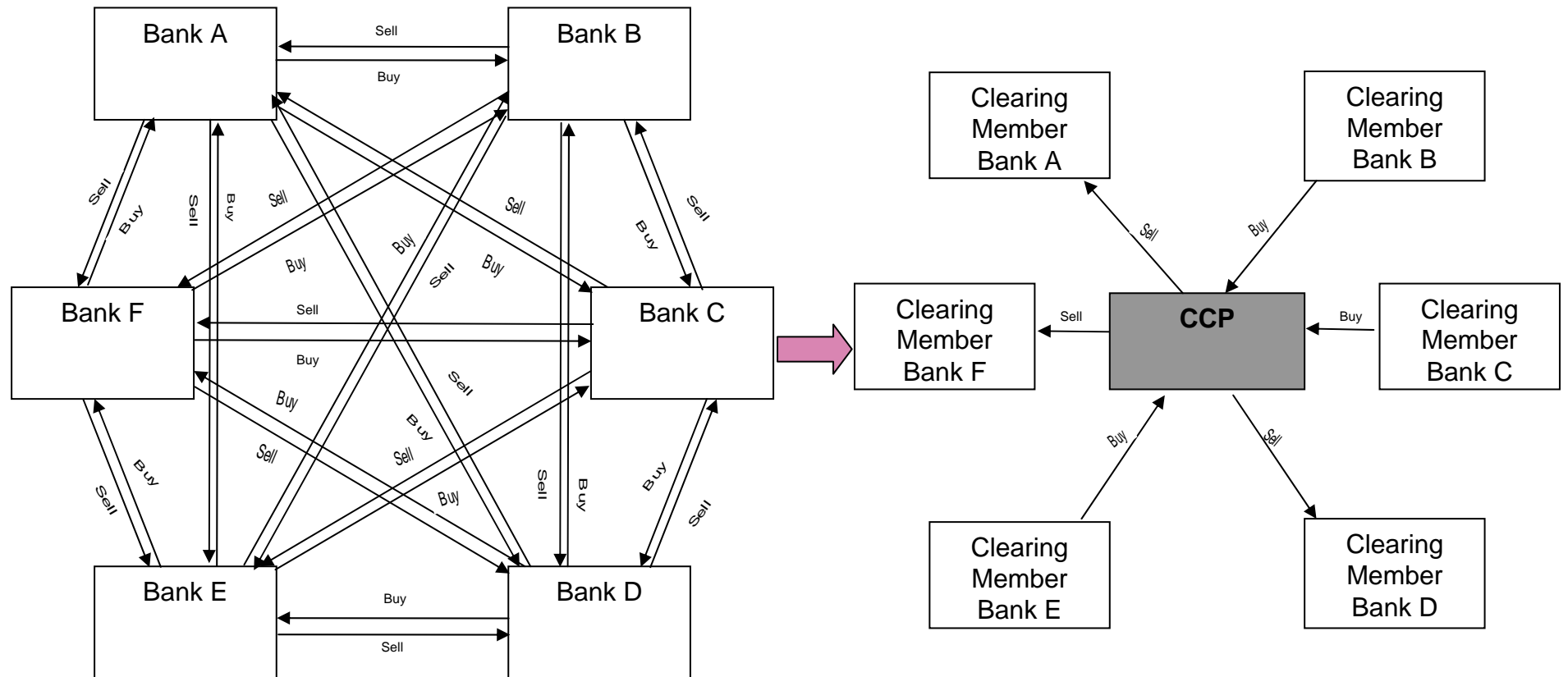
Financial Law Board, Japan

and

Linklaters, Tokyo

May 26th, 2011

## a. CCP at a Glance

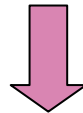


## b. Roadmap of CCP

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### G20 Pittsburg Summit

Deadline: By the end of 2012, which would be the “global” effective date.



U.S.A.: Dodd-Frank Wall Street Reform and Consumer Protection Act (July 2010)

E.U.: Proposals for a Regulation on OTC Derivative, Central Counter Parties and Trad Repositories (September 2010)

Public Consultation on Review of the MiFID (December 2010)

Japan: Amendments to the Financial Investments and Exchange Act (the “FIEA”, May 2010)

## c. Transactions to be cleared

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1. Credit Default Swaps to : iTraxx Japan:  
Must be cleared by the Japanese CCP (JCCP)
2. Interest Rate Swaps  
Must be cleared by JCCP or through linkage between JCCP and an overseas CCP
3. Other types of derivatives are not required to be cleared by JCCP under the FIEA

## d. Operator of JCCP

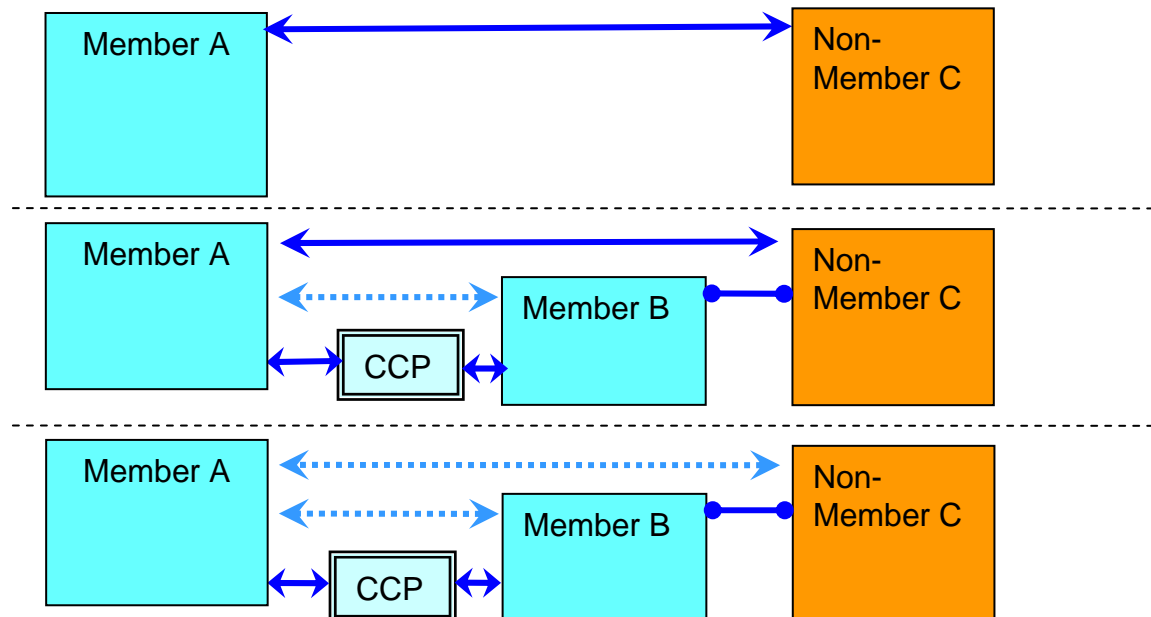
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Japan Securities Clearing Corporation (JSCC)

JSCC is a subsidiary of the Tokyo Stock Exchange.

## e. Legal Characterisation of JCCP Clearing

1. Between CCP and its members: Not the assumption of obligations, but novation type transaction based on the agreement among the CCP and the members.
2. Between the member and its non-member customer: The member will act as an agent for the non-member customer.



## f. Legal Challenges for JCCP

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1. Governing law for clearing

Does the governing law for the transaction need to be changed to Japanese law before being cleared, so that the governing law for the transaction will be the same as the governing law of the clearing?

Different governing laws are theoretically possible, but no clear guidelines.

## f. Legal Challenges for JCCP (cont.)

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2. Territorial or extraterritorial application of mandatory clearing – lots of variations!
  - (1) Transactions between Japanese residents but arranged overseas;
  - (2) Transactions between a Japanese resident and a non-resident;
    - A. directly negotiated transactions;
    - B. arranged overseas but booked with the Japanese resident;
  - (3) Transactions between an overseas branch of the Japanese resident and a non-resident;
  - (4) Transactions between an overseas branch of the Japanese resident and a Japanese resident;
  - (5) Transactions between an overseas subsidiary of the Japanese resident and a non-resident;
  - (6) Transactions between an overseas subsidiary of the Japanese resident and a Japanese resident; or
  - (7) Transactions between non-residents but arranged in Japan.



## g. Short Summary

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JSCC is scheduled to be in operation by mid July.

However, is international harmonisation of CCPs on a global basis possible?