CMC EUROPE

Commodity Markets Council - Europe

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To: Mr Valdis Dombrovskis, Vice-President for the Euro and Social Dialogue, also in charge of Financial Stability, Financial Services and Capital Markets Union, European Commission

Transmitted via electronic mail

Re: Equivalence for UK derivatives trading venues in case of a 'no-deal' Brexit

Dear Vice-President Dombrovskis,

I am writing to you on behalf of the Commodity Markets Council – Europe (CMCE) to ask the European Commission to take urgent action to prepare for the adoption of an equivalence decision for UK derivatives trading venues under Article 2a EMIR[1] in case the UK leaves the EU without a withdrawal agreement.

CMCE is an industry association comprised of agriculture, energy, metals and other commodity market participants, price reporting agencies and trading venues. Its commodity market participant members principally use the derivative markets to manage the risks stemming from their commercial operations.

If the UK leaves the EU in a 'no-deal' scenario and no such equivalence decision is made in respect of UK trading venues, CMCE Members are concerned that this could have material and damaging impacts on European commodity markets. It would present a sudden change to an established market structure, which has evolved to enable EU commercial end-users and commodity market participants to trade in commodity derivatives and to hedge the considerable price fluctuation risks to which their businesses are exposed.

As this market structure has evolved under the EU regulatory system, there can be no doubt that, substantively, UK trading venues are in fact equivalent for the requisite purposes under article 2a of EMIR.

If no such equivalence decision is made, exchange traded derivatives (ETD) traded on UK regulated markets would be considered OTC derivatives under EMIR in the event of a no-deal Brexit.

As a consequence EU non-financial counterparties (NFCs) would need to count these positions towards the EMIR clearing thresholds (excluding risk reducing positions). This could result in some EU non-financial counterparties exceeding the clearing threshold under article 10 of EMIR, making these firms subject to burdensome margining requirements for all their uncleared OTC transactions (including hedging transactions) under EMIR Article 11.

[1] Regulation (EU) No 648/2012 of 4 July 2012 on OTC derivatives, central counterparties and trade repositories

Similarly, EU financial institutions which provide hedging solutions to third country firms would be required to impose margining obligations on those firms, if they too exceed the clearing threshold as a result.

The imposition of these additional margin requirements on non-financial firms could lead to a reduction in commodity derivative activity (affecting liquidity and prices), but also to a reduction in hedging activity by EU commercial end-users and commodity market participants. Ultimately, this could result in higher consumer prices for certain products and commodities, such as energy. Broader adverse repercussions could potentially result for the EU financial markets, such as increased insolvency risk and resulting systemic risk in the credit markets, if these measures lead to a reduction of hedging by non-financial firms.

We therefore call on the Commission to urgently take the necessary steps to prepare for the swift adoption of an equivalence decision for UK derivatives trading venues under EMIR Article 2a in case of a ‘no-deal’ Brexit. We also ask you to provide much needed certainty to the markets by clarifying the approach that will be taken as soon as possible.

We remain at your disposal to further discuss the issue and to provide any clarifications you may need.

Sincerely,

Samina Anwar
Chair
CMCE Executive Committee