



Commodity Markets Council - Europe

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To: Ms Mairead McGuinness, Commissioner for Stability, Financial Services and Capital Markets Union, European Commission

Transmitted via electronic mail

Re: Equivalence for UK derivatives trading venues under Art. 2a EMIR

Dear Commissioner McGuinness,

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 EMIR¹ ahead of the end of the Brexit transition period on 31 December 2020.

If 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 and real economy firms that use these markets to hedge the risks related to their commercial activities. 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.

If no such equivalence decision is made, exchange traded derivatives (ETD) traded on UK regulated markets would be considered OTC derivatives under EMIR. 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.

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 is likely to 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

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

risk and resulting systemic risk in the credit markets, if these measures lead to a reduction of hedging by non-financial firms.

The absence of an EU equivalence decision would also leave EU market participants in a disadvantaged position compared to UK firms. On 9 November 2020, the UK government announced its intention to issue equivalence decisions at the end of the Brexit transition period under EMIR Article 2a that will allow UK firms to continue to treat derivatives traded on EEA regulated markets as exchange traded derivatives. If no EU equivalence decision is applicable as of 1 January 2021, EU non-financial counterparties will be disadvantaged, given that derivative transactions on UK regulated markets will be considered OTC transactions in the EU.

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. 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,

A handwritten signature in black ink, appearing to read 'S. Anwar', is positioned above the typed name.

Samina Anwar
Chair, CMCE Executive Committee