



EUROPEAN COMMISSION

Commissioner Mairead McGuinness
Financial Services, Financial Stability and Capital Markets Union

Brussels, 1st February 2021
Ares(2021)430793

Dear Ms Anwar,

Thank you for your letter dated 1 December 2020 on the equivalence of UK derivatives regulated markets under EMIR 2a and the described consequences of the end of the transition period for European firms.

As you know, the transition period ended on 31 December 2020. As of 1 January 2021, the United Kingdom (UK) has left the Single Market, which inevitably implies significant changes in the relationship between the EU and the United Kingdom.

Against this background, the Commission has repeatedly urged firms to complete their readiness measures by the end of 2020 and be ready for all possible scenarios, including for a no agreement and/or no equivalence situation, notably through the Communication on readiness of 9 July 2020¹ and through specific sectoral notices for financial services. Therefore, EU firms had ample time to prepare for these changes, and in fact many of them have duly prepared accordingly.

With particular regard to the specific issues that you mention in your letter, the 'Notice to stakeholders on the withdrawal of the United Kingdom and EU rules in the field of post-trade financial services'² clarifies the consequences of the re-categorisation of derivatives traded on UK regulated markets and the resulting implications for market participants. The Notice also details some specific elements of the current EMIR framework (i.e. exclusion of OTC contracts for hedging purposes from the clearing threshold³ and the phase-in implementation of EMIR requirements⁴). Moreover, ESMA has recently provided further clarification on the treatment of legacy derivatives contracts which are executed on UK regulated markets before the end of the transition period⁵. The Commission considers that, also based on the available data and the experience so far, potential impacts are likely to be limited and not immediate.

Ms Samina Anwar
Chair, CMCE Executive Committee
Commodity Markets Council Europe
Hume Brophy
41 Rue de la Science
B-1040 Brussels
Samina_Anwar@cargill.com
(cc) hugo.gallagher@humbrophy.com

¹ https://ec.europa.eu/info/sites/info/files/brexit_files/info_site/com_2020_324_2_communication_from_commission_to_inst_en.pdf

² https://ec.europa.eu/info/sites/info/files/brexit_files/info_site/post_trade_services_en.pdf

³ Under article 10 of EMIR, hedging transactions should not be counted towards the determination of the clearing thresholds

⁴ As established by EMIR delegated act according to which the timing for the entry into force depends on the volume of activity of the relevant counterparties (Article 36 - https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2016.340.01.0009.01.ENG)

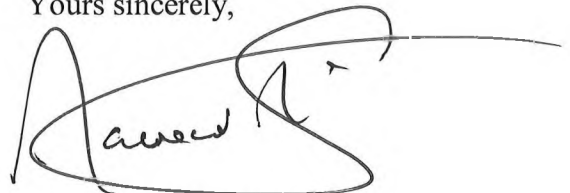
⁵ <https://www.esma.europa.eu/press-news/esma-news/esma-updates-emir-qas-0>

As regards equivalence assessments of the UK regulatory framework, we would like to recall that EU equivalence decisions are unilateral and adopted only if it is in the interest of the EU. The EU-UK Trade and Cooperation Agreement sets the terms of the overall future cooperation between both parties⁶ but, like other Free Trade Agreements, it does not cover equivalence processes for financial services. The EU and the UK have also agreed to set up a regulatory cooperation framework in financial services and committed to agree on the terms of the Memorandum of Understanding by March 2021. Please note that this date refers only to the terms for the cooperation. Equivalence decisions will remain autonomous EU (and UK) acts.

To conclude, we would like to reiterate the message that all EU firms need to take into account the new reality, with the UK as a third country outside the EU's Single Market. Together with ESMA, the European Commission will continue to closely monitor the situation to assess overall market liquidity and evolution of trading activities.

My services remain available for any further technical clarification.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Mairead', with a large, sweeping flourish extending to the right.

Mairead McGuinness

⁶ https://ec.europa.eu/commission/presscorner/detail/en/ip_20_2531