



7 December 2018

Commissioner Valdis Dombrovskis
Vice-President for the Euro and Social Dialogue, Financial Stability, Financial Services and
Capital Markets Union
European Commission
Rue de la Loi / Wetstraat 200
1049 Brussels
Belgium

Dear Vice-President Dombrovskis,

Clarification – Temporary Equivalence and Recognition in relation to UK CCPs

The International Swaps and Derivatives Association (ISDA), Futures Industry Association (FIA), Association for Financial Markets in Europe (AFME) and International Capital Markets Association (ICMA) welcome the statement regarding temporary equivalence for the purpose of recognition for UK CCPs in the European Commission's Communication regarding Brexit Contingency Planning published 13 November ("Communication") and the statement by ESMA published on 23 November.

The signatory organisations are committed to supporting financial stability and we appreciate the clearly stated intention of the Commission's Communication, to clarify that there will be continuity of service for EU members in this area of systemic importance, even in a hard Brexit scenario.

Our members have identified that certain areas of uncertainty nonetheless remain.

In the absence of the further comfort, clarity and legal certainty that is sought in this letter, we remain concerned that UK CCPs may deem it necessary to issue termination notices to their EEA members later this month, to ensure that those UK CCPs will not be in breach of EMIR Article 25 (which prohibits CCPs that are neither authorised nor recognised from having EEA clearing members) on 30 March 2019 in the event of the UK leaving the EU without agreement on a transition period. Where UK based brokers have established EU domiciled affiliates, these affiliates are in the process of applying for clearing memberships of UK CCPs. If already approved, these memberships will be subject to any termination notices, and future applications would be rejected, preventing EEA based clients which currently clear via such a broker from continuing to do so.

EEA members of the signatory associations also need clarity and certainty regarding the same issues, in order to prudently execute their contingency plans. Abrupt cessation of access to UK CCPs has the potential to introduce widespread disruption for EEA markets.

We therefore respectfully but urgently request that the Commission provide the desired legal certainty by publishing its proposed temporary equivalence determination for the UK (together with any conditions) and, in turn, procure that ESMA confirms that the three UK CCPs are each recognised under EMIR, on the condition that the UK leaves the European Union at the end of 29 March 2019 (CET) without a transition period coming into effect at the point of leaving and that the proposed temporary regime is implemented.

We additionally underline that temporary equivalence decisions for UK trading venues and regulated markets are critical to the maintenance of orderly markets within the EEA.

Whether or not a proposed temporary equivalence determination could shortly be published by the Commission, our members respectfully request timely confirmation of the answers to the following queries. Where one or more signatory organisations have already received informal confirmation from DG-FISMA with respect to these questions, we have set out our understanding and inferences made in light of DG-FISMA's responses:

- 1. Will the temporary and conditional equivalence/recognition of UK CCPs only apply to cleared *derivatives* or to *all* asset classes (including repos and cash equities) cleared via UK CCPs and what is the meaning of "*extent necessary to address financial stability risks arising from a withdrawal without an agreement*"? Would that mean that certain CCP services or products would not be recognised?**

Our understanding is that it is intended to apply to *all* asset classes and products. **Could you please confirm if that understanding is correct and if there any additional conditions thereto proposed?**

- 2. The Communication refers to the UK's proposed equivalence being temporary *and conditional*.**

Could you please clarify what conditions are proposed to be attached to such temporary equivalence?

- 3. Will the temporary recognition cover both new and legacy transactions?**

Our EEA members *strongly* wish to be able to continue executing trades on UK trading venues and clearing trades on UK CCPs after 29 March 2019, in order to be able to access and provide liquidity via the deep (and in some asset classes, globally unique) liquidity pools associated with these infrastructures. We are concerned that EEA members of our associations would not be able to participate in the default management processes at UK CCPs if temporary recognition were to apply to legacy transactions only. Such participation can be a condition of membership of some market infrastructure providers. Loss of access to UK trading venues and

CCPs would further increase financial stability risks and create competitive distortions that negatively impact EEA firms. **Could you please therefore make clear whether it is intended that both new and legacy transactions will be covered, or not?**

4. How long will this temporary recognition regime last?

We believe that the duration of such a temporary regime must be long enough to allow for the formal recognition of UK CCPs and avoid any gap that would re-create the current uncertainty. We would respectfully propose that temporary recognition should be at least 2 years in duration. **Could you please clarify the intended duration of the regime?**

5. When will the temporary recognition be proposed?

We understand that the current position of the Commission is that the UK cannot be declared equivalent, and UK CCPs cannot be recognised under EMIR unless and until the UK has left the European Union. UK CCPs are nonetheless being encouraged to pre-apply for such recognition. We understand the rationale for such a determination but note that such legally binding recognition will be too late for UK CCPs if it is only communicated on 30 March 2019. Some of the UK CCPs have 90-day notice periods for termination of a clearing member's membership. We understand that at least one of the UK CCPs currently intends to send termination notices to their EEA members as part of their Brexit contingency plans in mid-December. Timely responses to the queries raised in this letter are therefore requested from the Commission before then, on the basis that such additional comfort could avoid UK CCPs triggering such a termination process.

Ideally, this legal certainty would be provided by the Commission publishing a proposed temporary equivalence determination for the UK (together with any conditions) and by procuring that ESMA confirms that the three UK CCPs are recognised under EMIR, on the condition that the UK leaves the EU at the end of 29 March 2019 without a transition period coming into effect at the point of leaving and that the proposed temporary regime is implemented. We recognise that this may not be possible in this relatively short timeframe. However, we believe that timely responses to the queries raised in this letter would greatly assist UK CCPs in their deliberations.

6. How will the temporary recognition regime be implemented?

We understand that the Commission does not propose to enact any new regulation in connection with the temporary and conditional equivalence that is proposed to be unilaterally granted to the UK. Instead, the existing provisions of EMIR Article 25 would apply. **Could you please confirm if this understanding is correct?**

Urgent public clarification of these questions would allow members of the signatory associations to determine necessary mitigating actions regarding UK CCPs that they need to take in December.

We would additionally like to highlight that temporary equivalence decisions for UK trading venues and regulated markets are also critical to the maintenance of orderly markets within the

EEA. Please can you make clear whether the Commission intends to grant equivalence to UK trading venues so as to avoid the recharacterisation of UK Exchange Traded Derivatives (ETDs) as OTC derivatives after 29 March 2019?

As highlighted by the European Commission in its 'Notice to Stakeholders: Withdrawal of the United Kingdom and EU Rules in the Field of Post-Trade Financial Services' (February 2018), lack of an equivalence decision for the UK will lead to a re-classification of exchange traded derivatives (ETD) to over the counter (OTC) derivatives, which will attract different EMIR requirements including potentially the application of a longer margin period of risk, the loss of the ETD exemption to MiFIR's straight-through-processing requirements and changes in how to report those derivatives (amongst various other obligations). We query the Commission's assertion in the notice that the risk mitigation techniques in EMIR Article 11 would also apply. Article 11 specifically only covers trades that are not cleared by a CCP and there is no requirement for such a CCP to be authorised or recognised. UK CCPs would continue to meet the definition of CCP in EMIR.

Market participants would not be able to support (operationally) drastically changed workflows and requirements on and from 30 March 2019, which could ultimately impact the ability of EEA participants to access UK markets. This would impact not only the EEA clearing members, but also the wider client base on whose behalf those clearing members are clearing trades on those CCPs.

We again express our appreciation to the Commission for the recent Communication and respectfully request that the Commission support its intention to address risks to financial stability in a no-deal scenario by providing further clarity on these critical questions.

Yours sincerely,



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cc Olivier Guersent, Director-General, DG FISMA, Jan Ceyssens, Cabinet Vice-President Dombrovskis

The **Association for Financial Markets in Europe (AFME)** advocates for deep and integrated European capital markets which serve the needs of companies and investors, supporting economic growth and benefiting society. AFME is the voice of all Europe's wholesale financial markets, providing expertise across a broad range of regulatory and capital markets issues. We aim to act as a bridge between market participants and policy makers across Europe, drawing on our strong and long-standing relationships, our technical knowledge and fact-based work. Further information is available at www.afme.eu.

ICMA is the trade association for the international capital market with some 550 member firms from more than 60 countries, including banks, issuers, asset managers, infrastructure providers and law firms. It performs a crucial central role in the market by providing industry-driven standards and recommendations for issuance, trading and settlement in international fixed income and related instruments. ICMA liaises closely with regulatory and governmental authorities, both at the national and supranational level, helping to ensure that financial regulation promotes the efficiency and cost effectiveness of the capital market. www.icmagroup.org

Since 1985, **ISDA** has worked to make the global derivatives markets safer and more efficient. Today, ISDA has more than 900 member institutions from 70 countries. These members comprise a broad range of derivatives market participants, including corporations, investment managers, government and supranational entities, insurance companies, energy and commodities firms, and international and regional banks. In addition to market participants, members also include key components of the derivatives market infrastructure, such as exchanges, intermediaries, clearing houses and repositories, as well as law firms, accounting firms and other service providers. Information about ISDA and its activities is available on the Association's website: www.isda.org. Follow us on Twitter @ISDA.

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