



MANAGED FUNDS
ASSOCIATION



SWEDISH SECURITIES DEALERS ASSOCIATION

Vice-President Dombrovskis

Directorate-General for Financial Stability, Financial Services and Capital Markets

European Commission

1049 Bruxelles / Brussels

Belgium

12 November 2019

Dear Vice-President Dombrovskis,

Temporary Equivalence and Recognition in relation to UK CCPs

The Joint Associations¹ are very appreciative of the work carried out by the European Commission so far to ensure that there will be continuity of access for EU members to UK

¹ The Joint Associations are ISDA, FIA, AFME, FIA EPTA, AIMA, ASSOSIM, DAI, EBF, EFAMA, EFET, Eurelectric, MFA, SIFMA AMG and SSDA. Information on each association is set out in Annex II to this letter.

central counterparties (CCPs) even in the event that the UK leaves the EU without a deal. In particular, we welcome the Commission Implementing Decisions of 19 December 2018² which provided for temporary equivalence of the UK's regulatory framework for CCPs and central securities depositories (CSDs) for a period up to 30 March 2020 and 30 March 2021 respectively, as well as ESMA's recognition decisions in relation to three UK CCPs and the UK CSD.

We also appreciate the Commission's work in finalising the changes to the recognition regime for non-EU CCPs under EMIR 2.2, which we understand is close to publication in the Official Journal. We understand that this revised framework for recognition is intended to address the Commission's and Member States' concerns regarding supervision of non-EU CCPs while also introducing some important protections for EU counterparties to OTC derivatives in the event that equivalence and recognition of a non-EU CCP are withdrawn.

Since this new framework is close to being implemented into EU law, we would welcome confirmation from the Commission that it intends to extend the temporary equivalence for UK CCPs until the new framework for recognition of non-EU CCPs under EMIR 2.2 has become applicable and ESMA has completed its review of existing recognition decisions. It is important for the purpose of maintaining financial stability in the event of a "No Deal" Brexit for the Commission to provide this certainty in a timely fashion. It is also an important bridging measure to ensure that the transitional, anti-disruption protections for EU counterparties that have been negotiated under EMIR 2.2 will be available in the event that the UK is not ultimately found to be equivalent or in the event that UK CCPs are not able to obtain recognition (although we emphasise that we consider that it is of vital importance for financial stability that the necessary arrangements are put in place to ensure that UK CCPs are able to obtain recognition under EMIR 2.2).

We respectfully but urgently request the Commission to provide this confirmation well in advance of the end of December 2019 in order to mitigate the effects on EU counterparties and clearing members in the event that UK CCPs cannot obtain permanent recognition prior to 30 March 2020.

1. Executive summary

- We welcome the Commission's decision to grant temporary recognition to UK CCPs until March 2020. However, although the date of the UK's exit from the EU has been extended until 31 January 2020 and despite the significant work that firms have done to prepare, the reasons for granting temporary recognition still exist and an extension for only 2 months after the UK's exit from the EU is unlikely to be sufficient to mitigate the potential risk of disruption to EU clearing services.

² As amended by the Amending Decisions published in April 2019

- We ask the Commission to extend this temporary recognition until ESMA has completed its scheduled review of recognition decisions in existence as at entry into force of EMIR 2.2 (including the temporary recognition decisions in relation to UK CCPs), and the UK CCPs have had the opportunity to terminate the clearing memberships of EU clearing members.
- We respectfully urge the Commission to confirm that it intends to extend the temporary recognition as soon as possible and in any event well in advance of the end of December 2019.

2. An extension to the temporary equivalence decisions is necessary and appropriate to mitigate the risk to EU counterparties of market disruption post Brexit

In the absence of recognition for UK CCPs, EU clearing members would not be able to continue as direct members of UK CCPs and EU counterparties would not be able to clear (directly as a clearing member or indirectly as a client of a clearing member) OTC derivatives subject to the clearing obligation under Article 4 EMIR in UK CCPs. The Implementing Decision for CCPs³ identified the concern that this may result in temporary challenges for EU counterparties to fulfil their clearing obligations, which in turn may pose risks to the financial stability and the implementation of the monetary policy of the Union and its Member States.

The Implementing Decision stated that a disruption in the provision of clearing services could create risks for the real economy of the Union and that as a result it was necessary, in this exceptional situation, to determine the legal and supervisory arrangements governing UK CCPs to be equivalent for a strictly limited period of time and under specific conditions, so that EU firms can continue to access UK CCPs, including for the purpose of provision of clearing services to EU clients.

While we appreciate the fact that the Implementing Decision was granted in exceptional circumstances and that it was intended to be effective only for a limited period of time, we would argue strongly that it is necessary and appropriate to extend that limited period of time for two key reasons:

- The exceptional circumstances identified in the Implementing Decision continue to exist in spite of the efforts of market participants to mitigate the effects of these circumstances;
- EMIR 2.2 will introduce a permanent regime addressing the Commission's concerns regarding the ongoing maintenance and enforcement by the UK of the requirements applicable to UK CCPs and regarding the effective exchange of information and coordination of supervisory activities, while also addressing the risks that EU counterparties will face in the event that recognition is withdrawn. As a result, it would seem appropriate to align the end of the temporary equivalence and recognition regime

³ https://eur-lex.europa.eu/eli/dec_impl/2018/2031/oj

with the effective date of the relevant provisions under EMIR 2.2, in the event that UK CCPs do not obtain longer term recognition under EMIR 2.2 (although we view it as very important that UK CCPs do obtain recognition under EMIR 2.2).

We discuss each of these key reasons in more detail below.

Exceptional circumstances continue to exist

Market participants have carried out a huge amount of work since June 2016 to prepare for the UK's departure from the EU, including setting up new EU clearing units, re-papering EU clients and re-organising their access to EU and UK trading venues, CCPs and other market infrastructure. However, there are a number of factors that limit their ability to prepare for the loss of the temporary recognition of UK CCPs at the end of March 2020, including the fact that the range and depth of clearing services offered by the UK CCPs is not currently replicated elsewhere in the EU⁴. This means that there are certain products that cannot be cleared at all outside of UK CCPs, and even where products can be cleared through EU CCPs typically the risks involved with this activity will be increased (as risks are mutualised among a smaller number of clearing members). This will also be reflected in higher costs associated with clearing services. It is also worth noting that the location of clearing is driven by commercial factors including client demand, so moving clearing to EU CCPs is not entirely within the control of the EU clearing members.

In addition to these difficulties, we understand that the original deadline for expiry of the temporary equivalence decision was set on the basis that, following the UK's departure from the EU on the original exit date of 31 March 2019, UK CCPs would have up to one year to obtain a permanent recognition decision under Article 25 EMIR. As a result, firms' preparations have been based in part on a reasonable assumption that the Commission intended the temporary equivalence to be an interim measure until a permanent equivalence decision could be assessed. In the event that no permanent equivalence decision was possible, firms would then have taken steps to clear relevant OTC derivatives outside of the UK. There are still continuing concerns about the impacts that a large, simultaneous close-out of positions at UK CCPs (and corresponding opening of positions at EU CCPs) would have on the market. These concerns include market fragmentation and lack of liquidity at EU CCPs, as well as the concerns regarding increased costs and reduced risk mutualisation discussed above. For these reasons, it is hard for firms to justify taking these steps to clients unless it becomes unavoidable.

⁴ It is important to note that UK CCP access is necessary to clear products subject to the EMIR mandatory clearing obligation as well as products which are not. For example, IRS in CZK and a number of other currencies of smaller Member States are not cleared anywhere in the EU. As a result, de-recognition of UK CCPs would directly impact financial institutions in those smaller Member States, forcing them to cease clearing large numbers of IRS that are currently cleared through UK CCPs. Other products not subject to the clearing obligation (e.g., commodity derivatives) are often only cleared at UK CCPs and while EU counterparties could continue to (indirectly) clear those through UK CCPs, the regulatory capital costs of exposures to non-recognised UK CCPs will raise the cost of clearing for those products and may even be prohibitive, thus reducing access to clearing facilities for EU clients even further.

With the extension of the UK's exit date from 31 March 2019 to 31 January 2020, the period for the Commission to undertake a permanent equivalence assessment and for ESMA to process applications from UK CCPs for permanent recognition has been reduced from 12 months to only 2 months. As a result, if the temporary equivalence and recognition expires on 30 March 2020, there is no possibility of this temporary equivalence being replaced by a permanent equivalence and recognition as there is insufficient time remaining.

These difficulties are also exacerbated by the fact that EU counterparties to OTC derivatives are having to take steps to deal with multiple Brexit-related concerns simultaneously.

EMIR 2.2 will introduce a permanent regime addressing the Commission's concerns about recognition of UK CCPs

EMIR 2.2 will introduce a revised recognition regime under which ESMA will have the ability to review existing CCP recognition decisions as well as assess the systemic importance of non-EU CCPs providing services under the Article 25 EMIR recognition regime and adjust the supervisory measures applicable to those non-EU CCPs accordingly. EMIR 2.2 also makes specific provision for a situation where recognition of a non-EU CCP is withdrawn, setting out a clear process including protections and safeguards for EU clearing members and their clients.

However, EMIR 2.2 has not yet been published in the Official Journal and the required Level 2 legislation is still being developed, so this regime is not yet in effect. Based on the most recent Parliament text of EMIR 2.2, we understand that ESMA would have until 18 months from entry into force of the relevant Level 2 legislation to conduct its review of existing recognition decisions and its assessment of the systemic importance of non-EU CCPs recognised prior to entry into force, and to set an appropriate adaptation date by which the non-EU CCP must comply with any additional conditions for recognition.

As a result, we understand that any equivalence determination would need to remain in effect until at least the date 18 months after entry into force of the relevant Level 2 legislation in order for the new framework for recognition to apply to the relevant CCPs.

EMIR 2.2 also provides for a specific mechanism for ESMA to withdraw recognition from non-EU CCPs, including in circumstances where an equivalence decision has been withdrawn or suspended. Under this mechanism, ESMA is required to endeavour to minimise potential market disruption and provide for an appropriate adaptation period, which shall not exceed 2 years. This mechanism does not exist under the current text of EMIR. As a result, if temporary equivalence and recognition of UK CCPs is withdrawn prior to the applicable date of this mechanism, the safeguards for EU firms envisaged and agreed by the Commission, Parliament and Council under EMIR 2.2 will not be available.

3. UK measures to "onshore" EMIR measures for supervision of CCPs and effective equivalent recognition of EU CCPs

UK regime equivalent to Title IV EMIR

Under Article 25 EMIR, three conditions must be fulfilled in order for the Commission to determine that the legal and supervisory arrangements of a third country regarding CCPs are equivalent to those laid down in EMIR. The first two conditions are that the legal and supervisory arrangements of the third country must ensure that CCPs in that country comply with legally binding requirements equivalent to those in Title IV EMIR, and that CCPs in that jurisdiction are subject to effective supervision and enforcement on an ongoing basis.

As noted in the recitals to the Commission Implementing Decision, the UK has incorporated the provisions of EMIR and EMIR Refit into UK domestic law under the European Union (Withdrawal) Act 2018, with effect from the date of the UK's withdrawal from the EU, and UK CCPs are and will remain subject to supervision and enforcement by the Bank of England.

The Commission also stated in the Implementing Decision that the UK's legal and supervisory arrangements applicable to UK CCPs should only be considered equivalent "where the requirements applicable to CCPs in the United Kingdom domestic law are maintained and continue to be effectively applied and enforced on an ongoing basis". There is no indication from the UK that these requirements would cease to be effectively applied and enforced, and the expectation is that the UK would continue to require UK CCPs to comply with legally binding requirements equivalent to those in Title IV EMIR on an ongoing basis and at least until EMIR 2.2 is fully in effect.

Effective equivalent system for recognition of non-UK CCPs

Article 25 also requires that "the legal framework of the [UK] must provide for an effective equivalent system for the recognition of CCPs authorised under third-country legal regimes". As mentioned above (and as mentioned by the Commission in the recitals to its Implementing Decision), the UK will incorporate the provisions of EMIR (including Article 25) into UK domestic law with effect from the date of the UK's withdrawal from the EU. In addition to this, the UK has implemented a "Temporary Recognition Regime" (**TRR**), under which EU and non-EU CCPs may continue to provide services to UK counterparties for an initial period of up to 3 years following the UK's withdrawal from the EU. This initial period may be further extended by HM Treasury in 12 month increments. In order to rely on this temporary regime, non-UK CCPs which are permitted to offer clearing services in the EU prior to exit day may either notify the Bank of England that they intend to provide clearing services in the UK, or may submit an application for recognition prior to exit day. During the temporary regime, they will be deemed to be recognised to provide clearing services in the UK.

The UK has also established a run-off regime for non-UK CCPs, which allows non-UK CCPs which were eligible for the TRR but which did not enter the TRR, or which entered the TRR but exited the regime without obtaining permanent recognition, to continue to provide the clearing services in the UK that they were permitted to provide before Brexit for a further year post Brexit.

As a result, the UK system for recognition of CCPs authorised under third-country legal regimes is equivalent to that under EMIR and will remain so for at least 3 years following the UK's withdrawal from the EU.

4. Request for extension of the temporary equivalence and recognition of UK CCPs

Proposed duration of extension

We would respectfully request that the Commission amend the Implementing Decision on UK CCPs to extend the temporary equivalence at least until ESMA has been able to complete its review of recognition decisions and evaluation of the systemic importance of non-EU CCPs recognised at the date of entry into force under new Article 89(3c) EMIR (including the UK CCPs currently recognised under the temporary recognition decisions).

This extension would ensure both that EU counterparties may continue to satisfy their clearing obligation under EMIR through UK CCPs without disruption in the short term, that EU clearing members can continue to offer clearing services on UK CCPs to their clients, and also that the UK CCPs that currently benefit from temporary recognition would fall under the same regime as other non-EU CCPs that are currently recognised in the EU once EMIR 2.2 has come fully into effect. If ESMA considers that they are systemically important, they will need to comply with additional requirements under EMIR 2.2 in the same way as other non-EU CCPs, and if ESMA considers that they should no longer be recognised, the protections and safeguards agreed under EMIR 2.2 will be available to EU counterparties clearing through those UK CCPs.

We understand that, in the event that EMIR 2.2 is published in the Official Journal on 12 December 2019, the deadline for ESMA to complete its review of existing recognition decisions would be 1 July 2022 (i.e., 18 months after entry into force of the relevant Commission delegated acts under EMIR 2.2).

As a result, we request that the Commission amend the Implementing Decision on UK CCPs to extend the temporary equivalence until the date 18 months after entry into force of the relevant Commission delegated acts under EMIR 2.2, plus an additional three month period to allow UK CCPs to serve termination notices to EU clearing members in the event that their recognition is withdrawn following ESMA's review.

The Commission may also want to provide for a discretion to extend the temporary recognition further, in the event that permanent recognition has not been granted to the relevant UK CCPs by the end of this period. For example, the Commission could schedule a review of the temporary recognition decision 6 months prior to expiry, with the ability to extend the decision by a further 12 months if the reasons for granting temporary recognition still continue to exist.

We have set out in Annex I to this letter an indicative timeframe for the relevant steps to be taken under EMIR 2.2.

Timing for amendment of Implementing Decisions

We would also request the Commission to confirm its intention to make this amendment as soon as possible prior to the end of 2019. If the temporary recognition will still expire at the end of March 2020, UK CCPs will need to take steps to terminate the membership of relevant EU clearing members in good time before 31 March 2020 in order to avoid breaching the prohibition under Article 25 EMIR.

The notice period for termination of membership under the relevant CCP rulebooks is typically 3 months (to enable clearing members to move their positions with the least disruption to their clients and to the markets). As a result, in the absence of confirmation that the temporary equivalence decision will be extended, UK CCPs will need to start serving termination notices in December 2019 so that EU clearing members' membership will terminate by 30 March 2020.

We thank you for taking the time to consider our views on this issue. If you have questions on any of the issues addressed in this letter, we are happy to discuss them with you at your convenience.

Yours sincerely,

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International Swaps and Derivatives Association

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Annex I

Anticipated timings for implementation of EMIR 2.2

12 December 2019	EMIR 2.2 published in the OJ
1 January 2020	EMIR 2.2 enters into force
31 January 2020	UK leaves the EU
30 March 2020	Original expiry date of Commission decision on temporary recognition of UK CCPs
1 January 2021 (12 months after entry into force)	<p>Deadline for Commission to adopt delegated acts under EMIR 2.2 e.g., specifying the conditions for determining the systemic importance of non-EU CCPs (under new Article 25(2a) EMIR) or on the assessment of comparable compliance by Tier 2 (systemic) non-EU CCPs (under new Article 25a(3) EMIR).</p> <p>These delegated acts cannot enter into force until they have gone through the no-objection procedure with the Parliament and the Council which may take at least a couple of months (the no-objection period is three months extendible by a further three months).</p>
1 July 2022 (18 months after entry into force of the Commission delegated acts)	Deadline for ESMA to complete its evaluation of the systemic importance of non-EU CCPs recognised at the date of entry into force under new Article 89(3c) EMIR.

Annex II

Information about the signatory organisations

About ISDA

Since 1985, ISDA has worked to make the global derivatives markets safer and more efficient. Today, ISDA has more than 900 member institutions from 69 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.

About FIA

FIA is the leading global trade organization for the futures, options and centrally cleared derivatives markets, with offices in London, Singapore and Washington, D.C. FIA's membership includes clearing firms, exchanges, clearinghouses, trading firms and commodities specialists from more than 48 countries as well as technology vendors, lawyers and other professionals serving the industry.

FIA's mission is to:

- support open, transparent and competitive markets,
- protect and enhance the integrity of the financial system, and
- promote high standards of professional conduct.

As the leading global trade association for the futures, options and centrally cleared derivatives markets, FIA represents all sectors of the industry, including clearing firms, exchanges, clearing houses, trading firms and commodities specialists from more than 48 countries, as well as technology vendors, lawyers and other professionals serving the industry.

About AFME

The Association for Financial Markets in Europe (AFME) is the voice of all Europe's wholesale financial markets, providing expertise across a broad range of regulatory and capital markets issues. We represent the leading global and European banks and other significant capital market players. We advocate for deep and integrated European capital markets which serve the needs of companies and investors, supporting economic growth and benefiting society. 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.

About FIA EPTA

FIA European Principal Traders Association (FIA EPTA) represents 28 independent European Principal Trading Firms (PTFs) which deal on own account, using their own money for their own risk, to provide liquidity and immediate risk-transfer in exchange-traded and centrally-

cleared markets for a wide range of financial instruments, including shares, options, futures and ETFs. Our members are important sources of liquidity for investors accessing liquidity pools across Europe. As market makers and liquidity providers our members contribute to efficient, resilient, and high-quality secondary markets that serve the investment and risk management needs of end-investors and corporates throughout the EU27.

About AIMA

The Alternative Investment Management Association (AIMA) is the global representative of the alternative investment industry, with more than 1,900 corporate members in over 60 countries. AIMA's fund manager members collectively manage more than \$2 trillion in hedge fund and private credit assets.

AIMA draws upon the expertise and diversity of its membership to provide leadership in industry initiatives such as advocacy, policy and regulatory engagement, educational programmes and sound practice guides. AIMA works to raise media and public awareness of the value of the industry.

AIMA set up the Alternative Credit Council (ACC) to help firms focused in the private credit and direct lending space. The ACC currently represents over 100 members that manage \$350 billion of private credit assets globally.

AIMA is committed to developing skills and education standards and is a co-founder of the Chartered Alternative Investment Analyst designation (CAIA) – the first and only specialised educational standard for alternative investment specialists. AIMA is governed by its Council (Board of Directors).

About Associazione Intermediari Mercati Finanziari – ASSOSIM

ASSOSIM represents the interests of the intermediaries active on the Italian financial markets, namely, Italian investment firms, investment banks and subsidiaries of foreign investment services providers. Its members account for nearly the entire amount of the transactions carried out on the Italian stock markets as from Italy, and more than 80% when considering cross border transactions.

About Deutsches Aktieninstitut

Deutsches Aktieninstitut represents the entire German economy interested in the capital markets. Its approx. 200 members are listed corporations, banks, stock exchanges, investors and other important market participants. Deutsches Aktieninstitut has offices in Frankfurt am Main, Brussels and Berlin. www.dai.de/en/

About the EBF

The European Banking Federation is the voice of the European banking sector, bringing together national banking associations from 45 countries. The EBF is committed to a thriving European economy that is underpinned by a stable, secure and inclusive financial ecosystem, and to a flourishing society where financing is available to fund the dreams of citizens, businesses and innovators everywhere. Website: www.ebf.eu Twitter: @EBFeu.

About EFAMA

EFAMA is the voice of the European investment management industry, representing 28 member associations, 59 corporate members and 22 associate members. At end 2018, total net assets of European investment funds reached EUR 15.2 trillion. These assets were managed by almost 62,000 investment funds, of which more than 33,000 were UCITS (Undertakings for Collective Investments in Transferable Securities) funds, with the remaining funds composed of AIFs (Alternative Investment Funds).

About EFET

The European Federation of Energy Traders (EFET) promotes and facilitates European energy trading in open, transparent, sustainable and liquid wholesale markets, unhindered by national borders or other undue obstacles. We currently represent more than 100 energy trading companies, active in over 28 European countries. For more information, visit our website at www.efet.org.

About Eurelectric

Eurelectric is the federation for the European electricity industry. We represent the power sector in over 32 European countries, speaking for more than 3,500 companies in power generation, distribution and supply.

We contribute to the competitiveness of our industry, provide effective representation in public affairs and promote the role electricity in addressing the challenges of sustainable development. We draw on more than 1000 industry experts to ensure that our policy positions and opinions reflect the most recent developments in the sector. This structure of expertise ensures that Eurelectric's publications are based on high-quality input with up-to-date information.

For more: www.eurelectric.org

About MFA

Managed Funds Association (MFA) represents the global alternative investment industry and its investors by advocating for sound industry practices and public policies that foster efficient, transparent, and fair capital markets. MFA, based in Washington, DC, is an advocacy, education, and communications organization established to enable hedge fund and managed futures firms in the alternative investment industry to participate in public policy discourse, share best practices and learn from peers, and communicate the industry's contributions to the global economy. MFA members help pension plans, university endowments, charitable organizations, qualified individuals and other institutional investors to diversify their investments, manage risk, and generate attractive returns. MFA has cultivated a global membership and actively engages with regulators and policy makers in Asia, Europe, the Americas, Australia and many other regions where MFA members are market participants.

About the Securities Industry and Financial Markets Association's Asset Management Group

The Securities Industry and Financial Markets Association's Asset Management Group (SIFMA AMG) brings the asset management community together to provide views on U.S. and global policy and to create industry best practices. SIFMA AMG's members represent U.S. and global asset management firms whose combined assets under management exceed \$45

trillion. The clients of SIFMA AMG member firms include, among others, tens of millions of individual investors, registered investment companies, endowments, public and private pension funds, UCITS and private funds such as hedge funds and private equity funds.

About SSDA

The SSDA was founded in 1908 and represents the common interest of banks and investment firms active in the Swedish securities market. The Association's main objective is to promote sustainable and competitive securities market and it regularly raises its members' views on regulatory, market and infrastructure-related issues. It also provides a neutral forum for its members to discuss matters which are of common interest.