



Mrs. Mairéad McGuinness,
Commissioner for Financial services, financial stability and Capital Markets Union,
The European Commission,
200 Rue la Loi,
Brussels 1049,
Belgium

9 December 2020

Dear Commissioner McGuinness,

Equivalence – Derivatives Trading Obligation (DTO)

The trade associations signing this letter (the signatory associations) are writing to you to request that the European Commission recognize the equivalence of United Kingdom (UK) trading venues for the purpose of the derivatives trade obligation (DTO), before the end of the transition period provided for in the Withdrawal Agreement between the European Union (EU) and the United Kingdom (UK).

If equivalence of UK derivatives trading venues is not recognized, EU counterparties (including those that trade through a UK branch) will not be able to interact with UK counterparties in trading venues in either jurisdiction (or with third-country firms, including UK branches of those firms, in UK trading venues) in derivatives contracts that are subject to the DTO. In practice, this will mean that EU and UK counterparties will only be able to trade with each other in contracts subject to the DTO on U.S. Swap Execution Facilities (SEFs), as these are venues which benefit from equivalence decisions by both the EU and UK.

Furthermore, EEA firms that trade through branches in the UK are subject to duplicative DTOs under EU and UK rules, which will result in them being unable to interact with UK or international (non-UK and non-EU) firms on either UK or EU venues subject to the DTO. However, even if the UK DTO was not applied to UK branches of non-UK firms, UK branches of EEA firms (like EEA firms that do not operate through a branch in the UK) would still not be able to trade on UK or EU venues with UK counterparties (or on UK venues with other international counterparties) in contracts subject to the EU DTO in the absence of equivalence.

While a number of suggestions have been made as to the means through which the EU authorities could partially mitigate the lack of an equivalence determination by either jurisdiction, and to



address the duplicative trading obligation faced by UK branches of EEA firms¹, the signatory associations maintain that equivalence is the only solution that resolves all of these issues. ISDA has undertaken an extensive analysis in this regard, which it has previously shared with the EU and UK authorities: <https://www.isda.org/a/X1HTE/Impact-of-Brexit-on-the-Derivatives-Trading-Obligation.pdf>

Access to liquidity; unnecessary costs and complexity

At best, a failure to recognize the equivalence of UK trading venues will result in reduced choice (regarding where to trade) for end users, and avoidable extra costs and operational complexity for market participants in general. It is possible that split liquidity could lead to a price spread between venues, which market participants will need to finance. Asset managers that manage UK and EU funds will not be able to execute block trades on behalf of those funds because they won't be able to simultaneously satisfy both the UK and EU DTO, and will have to split their trades between venues, which will also drive extra costs. Less sophisticated EU end users may not be able to use SEFs, and the pricing they can access may be negatively impacted by being limited to trading with fewer potential counterparties. Together, these factors may lead to lower returns for investors.

Market disruption

In the absence of action from policymakers, there will be disruption in the market as of 1 January 2021, as not all clients across the industry will be ready to put in place alternative solutions on that date, despite best efforts.

If EU and UK counterparties can only trade on SEFs in derivatives subject to the DTO, the long term consequences for use of market infrastructure are uncertain

If EU and UK counterparties can only interact in contracts subject to the DTO on SEFs, the long term consequences for the geographical distribution of trading in contracts subject to the DTO are unclear, even if equivalence is eventually recognized by either jurisdiction in the short-to-medium term. The consequences for other aspects of EU and UK market infrastructure, and the extent to which it is used by EU and UK counterparties, are also uncertain.

¹ ISDA has written to the UK authorities both to urge the recognition of equivalence of EU trading venues, and to propose other unilateral action to enable EU and UK counterparties to trade with each other in derivatives subject to the trading obligation to the extent equivalence is not forthcoming from either the EU or UK.



The EU authorities agree, in principle, that fragmentation of derivatives business should be avoided

The EU and UK authorities undertook to avoid fragmentation, protectionism and regulatory arbitrage in the regulation of derivatives business when endorsing the 2009 Pittsburgh G20 communique. A decision to recognize the equivalence of each other's venues would be in keeping with this commitment.

EU and UK regulations on derivatives trade execution and trading venues are closely aligned and it would be appropriate for each jurisdiction to find the other equivalent

The UK has onshored MIFID 2/MIFIR, and its rules are near-identical to those in effect in the EU. There does not seem to be any substantive legal or technical reason not to find the UK's legal and supervisory framework with respect to trading venues equivalent regarding the DTO.

The signatory associations are grateful to the European Commission for their work on Brexit to date, including the recent temporary equivalence decisions regarding CCPs and CSDs, as well as – regarding derivatives specifically – the recent regulatory relief proposed for Brexit-related novations. We hope that the European Commission will consider whether it could take similar action to address the concerns set out in this letter. We would be happy to discuss this matter further with you and your team at your convenience.

Yours sincerely,

Michael Cole-Fontayn
Chairman
The Association for Financial Markets in Europe

Jack Inglis
Chief Executive Officer
AIMA

Wim Mijs
Chief Executive Officer
European Banking Federation



David Bullen
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Alexander McDonald
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Scott O'Malia
Chief Executive Officer
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Timothy W. Cameron, Esq.
Asset Management Group – Head and, Managing Director
Securities Industry and Financial Markets Association



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 AIMA

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 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 programs and sound practice guides. AIMA works to raise media and public awareness of the value of the industry.

About EBF

The European Banking Federation is the voice of the European banking sector, bringing together 32 national banking associations in Europe that together represent a significant majority of all banking assets in Europe, with 3,500 banks - large and small, wholesale and retail, local and international – while employing approximately two million people. EBF members represent banks that make available loans to the European economy in excess of €20 trillion and that reliably handle more than 400 million payment transactions per day. Launched in 1960, the EBF is committed to a single market for financial services in the European Union and to supporting policies that foster economic growth.

About EDMA Europe

Electronic Debt Markets Association represents the interests of companies whose primary business is the operation of regulated electronic fixed income multilateral trading facilities in Europe



(regulated markets and/or trading venues) and act as a source of consultation between the members in their roles as operators of such venues in order to project collective views on regulatory, compliance and market structure topics for the benefit of the electronic fixed income markets. More information at www.edmae.org

About EVIA

The European Venues and Intermediaries' Association promotes and enhances the value and competitiveness of *Wholesale Market Venues, Platforms and Arranging Intermediaries* by providing members with co-ordination and a common voice to foster and promote liquid, transparent and fair markets. It maintains a clear focus and direction, building a credible reputation upon 50 years of history, by acting as a focal point for the industry and providing clear direction to their members when communicating with central banks, governments, policy makers, and regulators.

Its core strength is the ability to **consolidate views** and data and act as a common voice for an industry operating in a complex and closely regulated environment, by acting as a central point for the industry and providing clear communication with central banks, governments, policy makers, and regulators.

It provides **specific standards** and maintains a clear focus and direction for the participants and stakeholders across the market ecosystem, building upon a credible reputation from over 50 years of experience.

About FIA

FIA is the leading global trade organization for the futures, options and centrally cleared derivatives markets, with offices in Brussels, 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 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 SIFMA AMG

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. For more information, visit <http://www.sifma.org/amg>.