Commissioner Maria Luis Albuquerque

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

European Commission

1049 Bruxelles / Brussels

Belgium

12 December 2024

Dear Commissioner Albuquerque

Equivalence and Recognition in relation to UK CCPs

We wish to offer our warmest congratulations on your appointment as Commissioner for Financial Services and the Savings and Investment Union, and we look forward to constructive engagement with you over the coming legislative term. We particularly welcome the Commission's renewed focus on competitiveness and its commitment to reduce administrative burdens, simplify legislation and better law making.

The Joint Associations[1] are appreciative of the work carried out by the European Commission (Commission) to safeguard EU financial stability by ensuring continuity of access for EU counterparties to United Kingdom (UK) central counterparties (CCPs).

As the Commission is aware, the current time-limited equivalence decision[2] determining that the regulatory and supervisory framework applicable to CCPs established in the UK (UK CCPs) is equivalent in accordance with Regulation (EU) No 648/2012 (EMIR[3]) expires on 30 June 2025.

Since the Commission made the current time-limited equivalence decision for UK CCPs, the new European Market Infrastructure Regulation (EMIR 3.0), the main legislative intent of which is to reduce EU counterparties' exposure to systemically important Tier 2 CCPs (all of which are UK CCPs) and to increase the attractiveness of EU CCPs, has been published in the Official Journal of the EU[4].

To address the perceived financial stability risks associated with what is considered to be excessive exposures of EU counterparties to Tier 2 CCPs, EMIR 3.0 requires EU counterparties above certain de minimis thresholds to hold active accounts and clear a representative number of transactions at EU CCPs in products belonging to clearing services identified by ESMA as being of "substantial systemic importance" (OTC interest rate derivatives denominated in euro and in Polish zloty and short-term interest rate derivatives denominated in euro) pursuant to EMIR ("Active Account Requirement").

The implementation of the Active Account Requirement is predicated on continued access for EU counterparties to global liquidity pools on Tier 2 CCPs, which necessitates an equivalence decision for UK CCPs being in place after 30 June 2025. The renewal of the UK CCP equivalence decision will allow for the Active Account Requirement to fully enter into application and thereby address the perceived financial stability risks represented by the exposures of EU counterparties to Tier 2 CCPs.

As the time-limited equivalence decision for UK CCPs expires on 30 June 2025, we respectfully ask the Commission to extend the equivalence decision for UK CCPs in a non-time-limited manner and well in advance of 31 March 2025.

This will preserve financial stability and provide EU market participants with continued access to global pools of liquidity after 30 June 2025 for a wide range of financial instruments, including for products available for clearing on UK CCPs only[5] (e.g. some commodity derivatives or interest rate swaps) and for products with very low liquidity on EU CCPs. It will also secure an international level

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[1] The Joint Associations are AFME, AIMA, EAPB, EBF, EFAMA, Energy Traders Europe, EVIA, FIA, FIA EPTA, ICI, ISDA and MFA. Information on each association is set out in Annex I to this letter.

[2] Commission Implementing Decision (EU) 2022/174 of 8 February 2022 determining, for a limited period of time, that the regulatory framework applicable to central counterparties in the United Kingdom of Great Britain and Northern Ireland is equivalent, in accordance with Regulation (EU) No 648/2012 of the European Parliament and of the Council.

[3] CL2012R0648EN0200010.0001.3bi_cp 1..1

[4] Regulation (EU) 2024/2987 of the European Parliament and of the Council of 27 November 2024 amending Regulations (EU) No 648/2012, (EU) No 575/2013 and (EU) 2017/1131 as regards measures to mitigate excessive exposures to third-country central counterparties and improve the efficiency of Union clearing markets (Text with EEA relevance)

[5] Some products are 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 significantly and may even be prohibitive, thus reducing access to clearing facilities for EU clients even further. In this context we note that there is a 1250% risk weight for default fund contributions to non-qualifying CCPs, compared to a typical risk weight of a single digit / low double digit (with a floor of 2%) for QCCPs.

playing field for EU Energy market participants, who will be able to draw all benefits from the new EMIR 3.0 and exclude cleared derivatives transactions from their clearing threshold calculations[6].

Non-time-limited equivalence decision

The continued and repeated uncertainty around time-limited equivalence decision harms EU firms and is counter to the development of the Savings and Investment Union.

To provide markets and EU market participants with much-needed certainty, we respectfully request that the Commission grant a non-time-limited equivalence decision in relation to UK CCPs. If the Commission does intend to grant a further time-limited equivalence decision, we would ask the Commission to consider granting this for at least 5 years, to limit uncertainty for EU counterparties.

We note that the legal and supervisory arrangements of the UK currently meet all the required conditions for a non-time limited equivalence decision as set out in Article 25 of EMIR. There are clear indications that the Bank of England will continue to require UK CCPs to comply with legally binding requirements equivalent to those in Title IV of EMIR, that it will continue to subject UK CCPs to effective supervision and enforcement and that it will continue to provide for an effective equivalent system for the recognition of third country CCPs, on an ongoing basis for the foreseeable future[7]. The recently established Joint EU-UK Financial Regulatory Forum[8] provides for sharing of information on regulatory developments relevant to the UK CCP equivalence decision.

Timing for the extension of equivalence decision

EU counterparties need legal clarity and certainty that they can continue to access clearing services at UK CCPs by March 2025. This necessitates both (i) the publication in the Official Journal of the EU of an equivalence decision for UK CCPs by the Commission, and (ii) a subsequent re-recognition decision of UK CCPs by ESMA.

We ask the Commission to inform EU market participants of its intention as soon as possible and at the latest by early March 2025. The notice periods for termination of membership under the relevant CCP rulebooks begin as early as 3 months prior to the date of expiry of the equivalence decision. 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 March 2025 so that EU clearing members' membership can be terminated by 30 June 2025.

An equivalence decision as soon as possible will also enable ESMA to commence the re-recognition process of UK CCPs in a timely fashion, preserve financial stability and foster global competitiveness of EU market participants.

By contrast, in the absence of an early equivalence decision we would expect to see increasingly severe market stress and disruption as March 2025 approaches. This would be caused by market

[6] EMIR 3.0 amends the clearing threshold calculation so that only derivatives that are not cleared at EU CCPs or third country CCPs recognised as equivalent count towards the clearing thresholds.

[7] The UK regime provides for an effective equivalent system for the recognition of third country CCPs, on an ongoing basis. The Temporary Recognition Regime (TRR) allows eligible non-UK CCPs to continue to provide clearing services in the UK before recognition is granted, so long as they continue to be eligible for the TRR. Where non-UK CCPs are granted recognition by the Bank of England, the recognition is non-time limited.

[8] Regulatory dialogues with the United Kingdom - European Commission

participants enacting contingency plans. This threat to financial stability can be avoided only by a positive UK CCP equivalence decision well in advance of the 30 March 2025 deadline.

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.

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Mark Copley

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MFA

Annex I

Information about the signatory organisations

About AIMA

The Alternative Investment Management Association (AIMA) is the global representative of the alternative investment industry, with around 2,100 corporate members in over 60 countries. AIMA's fund manager members collectively manage more than US$4 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 250 members that manage over US$2 trillion 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). For further information, please visit AIMA's website, www.aima.org

About AFME

AFME represents a broad array of European and global participants in the wholesale financial markets. Its members comprise pan-EU and global banks as well as key regional banks, brokers, law firms, investors, and other financial market participants. We advocate stable, competitive, sustainable European financial markets that support economic growth and benefit society. Information about AFME and its activities is available on the Association's website: www.afme.eu.

About EAPB

The European Association of Public Banks (EAPB) gathers member organisations (financial institutions, funding agencies, public banks, associations of public banks and banks with similar interests) from 17 European Member States and countries, representing directly and indirectly the interests of over 90 financial institutions towards the EU and other European stakeholders. With a combined balance sheet total of about EUR 3,500 billion and a market share of around 15%, EAPB members constitute an essential part of the European financial sector.

About EBF

The European Banking Federation is the voice of the European banking sector, uniting 33 national banking associations in Europe that together represent some 3,500 banks – large and small, wholesale and retail, local and international – employing about 2,7 million people.

About EFAMA

EFAMA, the European Fund and Asset Management Association, is the voice of the EUR 28.5tn European investment management industry. As a trade association, our role is to promote the interests of our members and raise awareness of the importance of the services and solutions they provide. Our pan-European membership as well as our governance ensure that we represent the rich diversity of the European investment management industry, and not merely a subset thereof. This makes us the natural interlocutor of the EU institutions for all issues relevant to our sector. Our remit goes beyond the EUR 31tn however. We support open and well-functioning global capital markets and engage with international standard seters and relevant third country authorities on a wide range of issues. Since its establishment, EFAMA has been fully supportive of the EU project and working hard towards helping the EU achieve its objectives, whether in terms of single market, consumer protection or more recently CMU and sustainable finance.

About Energy Traders Europe

Energy Traders Europe is the voice of Europe's energy traders. We represent 170 member companies from across the continent, working to promote the role of energy traders in the European energy market.

About EVIA

The European Venues & Intermediaries Association (EVIA) 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.

EVIA's 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.

EVIA 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.

EVIA was previously known as the Wholesale Markets Brokers' Association (WMBA) whose name reflected the Interdealer Broker industry and its origins began with the Foreign Exchange and Deposit Brokers' Association (FEDBA) established over 50 years ago. Its members cover global markets and facilitate the overwhelming majority of transaction volumes in the Over-The-Counter (OTC) markets.

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 about 50 countries as well as technology vendors, law firms and other professional service providers. 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 principal members of derivatives clearinghouses worldwide, FIA's clearing firm members play a critical role in the reduction of systemic risk in global financial markets.

About FIA EPTA

The European Principal Traders Association (FIA EPTA) represents the leading Principal Trading Firms in the EU and UK. Our members are independent market makers and providers of liquidity and risk transfer for markets and end-investors across Europe, providing liquidity in all centrally cleared asset classes including shares, bonds, derivatives and ETFs. FIA EPTA works constructively with policymakers, regulators and other market stakeholders to ensure efficient, resilient and trusted financial markets in Europe. More information about FIA EPTA and independent market makers is available on: www.fia.org/epta and www.wearemarketmakers.com.

About ICI

The Investment Company Institute (ICI) is the leading association representing the asset management industry in service of individual investors. ICI's members include mutual funds, exchange-traded funds (ETFs), closed-end funds, and unit investment trusts (UITs) in the United States, and UCITS and similar funds offered to investors in other jurisdictions. Its members manage $37.8 trillion invested in funds registered under the US Investment Company Act of 1940, serving more than 120 million investors. Members manage an additional $8.7 trillion in regulated fund assets managed outside the United States. ICI also represents its members in their capacity as investment advisers to collective investment trusts (CITs) and retail separately managed accounts (SMAs). ICI has offices in Washington DC, Brussels, and London.

About ISDA

Since 1985, ISDA has worked to make the global derivatives markets safer and more efficient. Today, ISDA has over 1,000 member institutions from 77 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, LinkedIn, Facebook and YouTube.

About MFA

Managed Funds Association (MFA), based in Washington, DC, New York, Brussels, and London, represents the global alternative asset management industry. MFA's mission is to advance the ability of alternative asset managers to raise capital, invest, and generate returns for their beneficiaries. MFA advocates on behalf of its membership and convenes stakeholders to address global regulatory, operational, and business issues. MFA has more than 180 member fund managers, including traditional hedge funds, credit funds, and crossover funds, that collectively manage over €3 trillion across a diverse group of investment strategies. Member firms help pension plans, university endowments, charitable foundations, and other institutional investors to diversify their investments, manage risk, and generate attractive returns over time.