

MEMO# 33775

September 17, 2021

Joint Associations Letter on EU Equivalence and Recognition of UK CCPs

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TO: Derivatives Markets Advisory Committee
Global Advocacy Coordination Advisory Committee
Global EU Capital Markets Union Task Force
Global Regulated Funds Committee
Global Trading & Markets Committee
UK-EU Cross Border Task Force RE: Joint Associations Letter on EU Equivalence and Recognition of UK CCPs

On 16 September 2021, ICI Global and several other trade associations[\[1\]](#) wrote to Mairead McGuinness, European Commissioner for Financial Stability, Financial Services and Capital Markets, asking for an extension of the EU's temporary equivalence decision for UK CCPs which is due to expire on 30 June 2022.

Background

On 21 September 2020, the European Commission ("the Commission") adopted a time-limited equivalence decision[\[2\]](#) determining that the regulatory and supervisory framework applicable to central counterparties (CCPs) established in the UK is equivalent in accordance with Regulation (EU) No 648/2012 (EMIR).[\[3\]](#) The equivalence decision has provided continued access by EU counterparties and clearing members to three recognised UK CCPs[\[4\]](#) post Brexit[\[5\]](#) but is due to expire on 30 June 2022. EMIR 2.2.[\[6\]](#) sets out procedures for the recognition of third-country CCPs (e.g., UK CCPs) by ESMA which are currently being finalised.[\[7\]](#)

Joint Associations Letter

ICI Global co-signed a letter with several other trade associations that was sent to Mairead McGuinness, European Commissioner for Financial Stability, Financial Services and Capital Markets on 16 September 2021 (see the link at the foot of this memorandum.) In the letter, the trade associations respectfully asked the Commission to extend the equivalence decision for UK CCPs because of the following:

- A longer-term approach to equivalence for UK CCPs is necessary and appropriate to

mitigate the risk to EU firms of market disruption;

- EMIR 2.2 provides ESMA with effective supervisory powers for overseeing Tier 2 CCPs (i.e., systemically important or likely to become systemically important CCPs); and
- Clear indications from the UK are 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.

The executive summary of the letter contains the following points:

- We welcome the Commission's decision to grant a time-limited equivalence decision in respect of UK CCPs. However, when this time-limited equivalence decision expires on 30 June 2022, there remains a significant risk of disruption to clearing for EU firms and to their access to global markets.
- Because of this potential for major disruption due to an inability to clear on UK CCPs, and in consideration of the enhanced powers available to ESMA and EU CBIs and the protections granted to EU clearing members and their clients under EMIR 2.2, and the UK's continued adherence to EMIR provisions, the Joint Associations (representing the broadest group of market participants) ask the Commission to extend the equivalence decision for UK CCPs.
- We recognise that the Commission and in particular ESMA need to consider carefully the potential financial stability impact of substantial, systemically important clearing services being provided in the EU by non-EU CCPs, and we remain convinced that EMIR 2.2, with its new enhanced recognition framework, gives ESMA appropriate powers to deal with any such financial stability related concerns that may be identified.
- The industry recognises the European Commission's objective of growth of EU financial market infrastructures and supports the growth of derivatives transaction clearing in EU CCPs. Indeed, the services provided by EU CCPs enhance choice and competition in derivatives clearing, to the benefit of market participants. The build-up of liquidity on EU CCPs should be voluntary and market driven and needs to be given sufficient time to develop. There is already clear evidence of liquidity flowing towards EU CCPs, and our expectation is that this will continue.
- We are concerned that if the Commission allows the time-limited equivalence decision to expire, EU clearing members would not only lose access to UK CCPs that have been determined to be of such substantial systemic importance that they can no longer be recognised, but they would also lose access to UK CCPs that are not systemically important and that would otherwise be able to benefit from recognition under EMIR 2.2.
- We would welcome the opportunity to discuss with the Commission the risks to the EU that the Commission perceives, should UK CCPs continue to be able to offer clearing services to EU market participants after 30 June 2022. The ongoing uncertainty confronting EU clearing members and their clients is already negatively impacting their clearing business. If the Commission is considering allowing the time-limited equivalence decision to expire, we would also welcome the opportunity to discuss the solutions that the Commission is considering to mitigate any potential market disruption that may result, and the time that may be needed to develop and implement those solutions.
- In the meantime, the Joint Associations will continue to work with the Commission and other EU authorities to achieve the least disruptive outcomes for EU capital markets.

endnotes

[1] AFME, AIMA, EAPB, EBF, EFAMA, FIA, ICI, ISDA, SIFMA AMG.

[2] COMMISSION IMPLEMENTING DECISION (EU) 2020/1308 of 21 September 2020 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, *available at* <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32020D1308&from=EN>

[3] Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories, *available at* <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32012R0648>

[4] ESMA Press Release: ESMA to recognise three UK CCPs from January 2021, dated 28 September 2020, *available at* [https://www.esma.europa.eu/press-news/esma-news/esma-recognise-three-uk-ccps-1-january-2021#:~:text=The%20European%20Securities%20and%20Markets,country%20CCPs%20\(TC%2DCCPs\)](https://www.esma.europa.eu/press-news/esma-news/esma-recognise-three-uk-ccps-1-january-2021#:~:text=The%20European%20Securities%20and%20Markets,country%20CCPs%20(TC%2DCCPs))

[5] *i.e.* from end of the transition period following the withdrawal of the UK from the EU on 31 December 2020

[6] Regulation (EU) 2019/2099 of the European Parliament and of the Council of 23 October 2019 amending Regulation (EU) No 648/2012 as regards the procedures and authorities involved for the authorisation of CCPs and requirements for the recognition of third-country CCPs, *available at* <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32019R2099>

[7] ESMA's Methodology for assessing a Third Country CCP under Article 25(2c), EMIR, *available at* <https://www.esma.europa.eu/file/120204/download?token=5FSq8jLL>