

COMMENT LETTER

April 8, 2019

ICI Global Joins Letter Urging UK Recognition of EEA Trading Venues in Preparation for Brexit (pdf)

233813-4-631-v7.0 - 1 - 70-40705620 Mr Charles Roxburgh Second Permanent Secretary HM Treasury 1 Horse Guards London SW1A 2HQ 5 April 2019 Dear Mr Roxburgh Brexit – Recognition of EEA derivatives trading venues under EMIR and MiFIR as they apply in the UK after Brexit FIA, the International Swaps and Derivatives Association, the Alternative Investment Management Association, the Association for Financial Markets in Europe, Associazione Intermediari Mercati Finanziari - ASSOSIM, the European Federation of Energy Traders, ICI Global, the Securities Industry and Financial Markets Association's Asset Management Group and UK Finance (the Associations) welcome the steps taken by HM Treasury and the UK regulators to mitigate the adverse impact of the UK leaving the EU in a 'no-deal' scenario, i.e., where the UK leaves the EU without concluding a withdrawal agreement providing for a transition or implementation period. In particular, the Associations welcome the actions taken by HM Treasury and the UK regulators under the powers in the European Union (Withdrawal) Act 2018 to ensure that the UK legal and regulatory framework works effectively after the UK's exit from the EU and the various temporary and transitional measures adopted under those powers. However, the Associations remain concerned about the disruptive impact on UK market participants and European derivatives markets if HM Treasury does not take urgent action with respect to the recognition of EEA derivatives trading venues under EMIR and MiFIR as they apply in the UK in a 'no-deal' scenario (EMIR UK and MiFIR UK) or if the Financial Conduct Authority (FCA) does not grant transitional relief in this regard using its proposed temporary transitional powers. 233813-4-631-v7.0 - 2 - 70-40705620 A group of industry associations including a number of the Associations wrote to Vice- President Dombrovskis on 28 February 2019 (see attached) setting out their concerns as to why there would be a disruptive impact on EU27 market participants and European derivatives markets if the European Commission does not act to recognise UK derivatives trading venues under EMIR and MiFIR. The Associations have corresponding concerns as to why there would be a disruptive impact on UK market participants and European derivatives markets if HM Treasury does not act to recognise EEA derivatives trading venues under EMIR UK and MiFIR UK (or if the FCA does not at least grant temporary transitional relief in this regard).

1. EEA exchange-traded derivatives will be reclassified as OTC derivatives In the absence of an equivalence determination by HM Treasury under Article 2a of EMIR UK with respect to EEA regulated markets, EEA exchange-traded derivatives (EEA ETDs) will be considered OTC derivatives under EMIR UK after the UK leaves the EU in a 'no-deal' scenario. EEA regulated markets offer for trading a broad range of exchange-traded derivatives that are

widely used for risk-management purposes by market participants in the UK and elsewhere. In many cases, EEA regulated markets provide market users with uniquely deep and liquid markets in some products and there is no direct substitute for some EEA ETDs on regulated markets in the UK or in other third countries. For example, Euronext offers widely traded contracts on agricultural commodities (such as milling wheat, rapeseed and corn), Eurex offers widely traded interest rate, equity and foreign exchange derivatives (trading approximately 70% of all listed and centrally cleared euro interest rate derivatives) and Nasdaq Oslo ASA Exchange offers trading in power and gas, oil, renewables and other commodities (including contracts on Nordic power which is one of the most liquid power derivatives markets in the world). As a result, there would be a significant adverse impact on UK non-financial counterparties (NFCs) currently under the EMIR clearing threshold and UK financial counterparties (FCs) with smaller positions in OTC derivatives:

- Impact on UK NFCs. UK NFCs would need to include their positions in EEA ETDs (other than those entered into for risk-reduction purposes only) when determining whether they exceed the clearing threshold under EMIR UK. Exceeding the clearing threshold would significantly affect the ability of a UK NFC to risk manage its business because of the possible impact of collateral requirements on all its OTC derivatives transactions (including any unrelated interest rate or other derivatives entered into for hedging purposes). Therefore, it may need to reduce or limit its positions in EEA ETDs to ensure that it does not exceed the clearing threshold under EMIR UK after Brexit and become subject to clearing, margin and other requirements under EMIR. This may have a significant impact on its business model.
- Impact on small UK FCs. UK FCs would have to aggregate their group's positions in EEA ETDs when determining whether they are 'small financial counterparties' that are exempt from the clearing obligation under EMIR REFIT as it applies in the UK (assuming that HM Treasury makes provisions applicable in the UK corresponding to the provisions of EMIR REFIT under its proposed powers under the Financial Services (Implementation of Legislation) Bill). Therefore, UK FCs may need to reduce or limit their positions in EEA ETDs to ensure that they do not exceed the clearing threshold under EMIR UK after Brexit and become subject to the clearing obligation under EMIR 233813-4-631-v7.0 - 3 - 70-40705620 UK. This may significantly restrict a UK FC's ability to invest or risk manage its activities. These considerations would also adversely affect the ability of EEA and other third-country NFCs and FCs to trade with UK counterparties after Brexit as they would be required to include their positions in EEA ETDs when determining whether they exceed the clearing threshold or can rely on the exemption for small financial counterparties for the purposes of such trading. In addition, a different classification of EEA ETDs under EMIR and EMIR UK after Brexit would mean that a counterparty trading in OTC derivatives with counterparties in both the UK and the EEA may be differently classified for the purposes of the clearing threshold in the UK and the EEA (possibly as a result of positions in EEA ETDs held by another member of its group). This would exacerbate disruption and the fragmentation of markets.

2. UK counterparties will not be able to satisfy the derivatives trading obligation by trading on EEA venues. MiFIR UK will require UK FCs and UK NFCs over the clearing threshold (NFC+s) to conclude their transactions in OTC derivatives subject to the trading obligation either on a UK trading venue or on a non-UK trading venue from a jurisdiction determined to be equivalent by HM Treasury. In the absence of an equivalence determination by HM Treasury under Article 28(4) of MiFIR UK with respect to EEA multilateral trading facilities (MTFs) and organised trading facilities (OTFs), UK FCs and UK NFC+s would, after the UK leaves the EU in a 'no-deal' scenario, cease to be able to execute transactions in OTC derivatives subject to the trading obligation under MiFIR on those venues. As a result:

- UK banks and investment firms would not be able to access those EEA venues to service their clients or to risk manage their own positions;
- Transactions between UK and EEA counterparties subject to their respective trading

obligations may be subject to conflicting requirements, unless the EU recognises UK trading venues. □ Global liquidity would be fragmented across multiple venues. In particular, UK counterparties subject to the trading obligation in the UK and EEA counterparties subject to the trading obligation in the EEA may be unable to trade with each other in products subject to those obligations because there would be no common execution venue practically available to both parties to satisfy those obligations. In many cases, it will not be practical for the parties to use a US swap execution facility (SEF) for execution purposes, even though SEFs would be recognised as equivalent both in the UK and the EU. Many EEA clients would not be participants in SEFs (e.g., because there may be EEA regulatory restrictions on SEFs providing services to EEA clients). Even where both counterparties also are SEF participants, there may be other disincentives to trading via a SEF as compared to trading via an EEA or UK MTF or OTF (such as the requirement in some cases for a client to solicit quotes from three dealers).

233813-4-631-v7.0 - 4 - 70-40705620 3. HM Treasury should act to adopt equivalence determinations with respect to EEA trading venues. Therefore, the Associations urge HM Treasury to prepare the necessary measures to recognise the equivalence of EEA derivative trading venues under EMIR UK and MiFIR UK with a view to those measures taking effect at or very shortly after the UK leaves the EU without concluding a withdrawal agreement providing for a transition or implementation period. If necessary, HM Treasury could consider a temporary or limited equivalence decision with respect to EEA derivative trading venues. HM Treasury has the power to take the necessary action by making an equivalence direction under the Equivalence Determinations for Financial Services and Miscellaneous Provisions (Amendment etc) (EU Exit) Regulations 2019 (SI 2019/541). As an alternative, the Associations urge HM Treasury to work with the FCA with a view to the FCA granting transitional relief for this purpose using its temporary transitional powers under Part 7 of the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 (SI 2019/632). It is important that HM Treasury and the FCA indicate the approach that they intend to take as soon as possible to enable UK, EEA and third-country counterparties to take appropriate action and to reduce uncertainty and to avoid disruption of financial markets. The Annex to this letter sets out information on the Associations. We are copying this letter to your colleague, Katharine Braddick, and to Andrew Bailey at the FCA. We hope that this letter is helpful to your consideration of these issues. Please contact the undersigned if you would like to discuss the matters set out in this letter. Yours sincerely, Walt Lukken President and CEO, FIA Scott O'Malia, CEO International Swaps and Derivatives Association Jiří Król, Deputy CEO, Global Head of Government Affairs Alternative Investment Management Association

233813-4-631-v7.0 - 5 - 70-40705620 Simon Lewis, Chief Executive Officer The Association for Financial Markets in Europe Mr. Gianluigi Gugliotta, Secretary General Associazione Intermediari Mercati Finanziari - ASSOSIM Mr Jan van Aken, Secretary General European Federation of Energy Traders Jennifer S. Choi, Chief Counsel ICI Global Timothy W. Cameron Asset Management Group Head and Managing Director The Securities Industry and Financial Markets Association's Asset Management Group Stephen Jones CEO UK Finance

cc: Katharine Braddick, Director of Financial Services, HM Treasury Andrew Bailey, Chief Executive, Financial Conduct Authority 233813-4-631-v7.0 - 6 - 70-40705620 ANNEX The Associations 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 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 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.

233813-4-631-v7.0 - 7 - 70-40705620 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 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 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 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 ICI Global ICI Global carries out the international work of the Investment Company Institute, the leading association representing regulated funds globally. ICI's membership includes regulated funds publicly offered to investors in jurisdictions worldwide, with total assets of US\$27.7 trillion. ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of regulated investment funds, their managers, and investors. ICI Global has offices in London, Hong Kong, and Washington, DC.

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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 UK Finance UK Finance is the collective voice for the banking and finance industry. Representing more than 250 firms across the industry, we act to enhance competitiveness, support customers and facilitate innovation. We work for and on behalf of our members to promote a safe, transparent and innovative banking and finance industry. We offer research, policy expertise, thought leadership and advocacy in support of our work. We provide a single voice for a diverse and competitive industry. Our operational activity enhances members' own services in situations where collective industry action adds value.

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