



Jonathan FAULL

Director General
DG Internal Market and Services
European Commission
1049 Brussels
Belgium

Re: Article 19(6) MiFID list of equivalent third-country markets

Dear Mr. Faull,

We are writing to you on behalf of over 900 commercial commodity market participants regarding the implementation of Article 19(6) of Directive 2004/39/EC on markets in financial instruments (MiFID). We consider the relevant list of third-country markets equivalent to a regulated market to be essential to the application of Regulation 648/2012 on OTC derivatives, central counterparties and trade repositories (EMIR).

We respectfully reiterate our concerns to the European Commission (the Commission), regarding the non-implementation of Article 19(6), which adversely affects commercial market participants that use derivatives markets predominantly to manage risk for their commercial activities and treasury financing. We again urge the Commission to make public the requisite list of equivalent third-country markets as soon as possible.

For clarity, we restate the issue and why the signatories of this letter feel it is necessary to again express our concerns. In the absence of a list of third-country markets under Article 19(6) of MiFID, contracts executed on those markets, including exchange-traded derivatives, are considered OTC derivative contracts per Article 2(7) of EMIR. As such, transactions in these derivative contracts by non-financial counterparties (NFCs) that do not meet the hedge exemption of Article 10 of EMIR count towards clearing thresholds. NFCs breaching a clearing threshold are subject to various additional EMIR requirements.

The Commission has previously stated that the Article 19(6) list would be prepared and promptly made public. However, it has been over a year since the industry first raised our concerns with the Commission and no list has as yet been made public.

We emphasise the importance of the publication of this list as soon as possible. We consider that the non-implementation of Article 19(6) continues to propagate uncertainty across exchange-traded derivative markets worldwide. This has raised the costs of compliance and risk management for commercial market participants, many of which have established other arrangements in the interim. Other commercial market participants have been forced to take additional risk on to their balance sheets.

These costs place commercial market participants subject to EMIR provisions at a material competitive disadvantage. We consider these costs as unnecessary and the direct result of non-implementation of Article 19(6).

We are aware of the various reasons provided by the Commission for this delay. We also note your recent letter to S. Maijor with reference to the expiry of certain delegated powers set out in Article 64 of MiFID. We consider such delegated powers are not necessary to make public the Article 19(6) list. The provision as amended by Directive 2010/78/EU provides clear and independent direction to the Commission and ESMA to publish the list of equivalent third-country markets on their websites. We

consider that even a more limited list of equivalent markets in the United States, Singapore, Canada, Switzerland, Japan and Australia would substantially solve the problems faced by our members.

We respectfully urge that the Commission reconsiders its approach on implementation. We believe that the proper application of EMIR requires a list of equivalent third-country derivatives markets only. We consider that even a more limited list of equivalent markets in key jurisdictions including the United States would substantially solve the problems faced by our members. We respectfully urge the Commission to make public a list of US DCMs and other markets considered equivalent to a regulated market as per Article 19(6) without further delay. We encourage the Commission to continue its work on markets in other countries and regularly update the list of equivalent third-country markets. We believe that Article 19(6) facilitates a practical implementation approach by providing for periodic updates to the list of equivalent third country markets, and we urge the Commission to adopt such an approach.

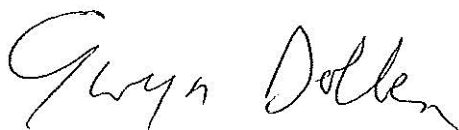
Sincerely,



Jaime Chisholm Caunt (Director General, GAFTA)



Gregg Doud
President
Commodity Markets Council



Gwyn Dolben (Head of European Affairs, Energy UK)



Jan Van Aken (Secretary General, EFET)



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CC

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Steven Maijoor, Chairman, European Securities and Markets Authority