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To: MARKT LIST G3
Subject: Meeting with RWE

On Wednesday, December 14th, Valerie Ledure, Jasper Jorritsma and Linda Salieska met with [redacted] from RWE Supply & Trading GmbH – an energy firm.

RWE generally welcome the EU Commission proposal for MiFID review. However, there were few concerns raised.

On exemptions under Article 2 (1) (d) and Article 2(1) (i), they suggest that the wording of, either the provision itself or the wording of the delegated acts (level 2) with regards to defining the concept of ancillary activity should provide greater clarity and certainty to market participants, such as energy firms. For RWE, the exemption for ancillary activities is crucial as the exemption 2(1)(k) has been deleted. They would welcome more clarity at Level 1, possibly based on the notion of capital employed. This is the assets held by a company, and would entail applying CRD to trading on a hypothetical basis.. They also welcome the inclusion of hedging as an ancillary activity (in line with EMIR definition).

In energy trading, it is relatively common for firms to have direct market access. This includes joint ventures owned by municipalities, and dedicated trading companies. They therefore propose to only require HFT firms with direct access to become investment firms.

On definition of financial instruments, they seek precise clarification and distinction between financial instruments (covered under MiFID) and physically settled contracts with future delivery (which should not be covered under MiFID) because it is basically a main commercial activity not traditional derivative trading. In order to filter out the commercial activities from the definition of financial instruments, they propose that the "commercial purpose test"/ the intention test should also apply to physically settled forwards traded over RM, MTFs and OTFs. They would propose a commercial purpose test for all physically settled derivatives, instead of looking at where they are traded. Moving physical futures to financial instruments could also shift part of their main business to being considered as financial.

On position limits and reporting, they are in favour of position management supported by appropriate position reporting, rather than to empower regulated platforms and regulators to establish ex-ante position limits in respect of commodity derivatives. In dynamic markets, such as energy and gas, it is difficult and unpredictable to set position limits, where very likely the set of position limits can affect market liquidity and price volatility. Hedgers and/or hedging activity should be exempt from position limits.

On emission allowances, they do not support the proposal to define the emission allowance as a financial instrument and to expand the scope of the licensing requirement because emission allowances do not represent titles of capital, title to debentures or constitute forward contract. They suggest specific integrity measures to be introduced with respect to emission allowances in order to protect the investors and the proper functioning of the market. They are against reclassification of emission allowances, as this leads to problems when rebalancing portfolios of compliance buyers.

MiFIR/ mtglnd

On mandatory platform trading, they are concerned with regards to the threshold specified under EMIR because companies trading on organised trading venues will have to maintain larger capital buffer which very likely will contribute to discourage trading and reduce liquidity. They are concerned about liquidity when moving trading to platforms. They would also want to be able to conduct their hedging OTC, even when having crossed the total threshold under EMIR.

In order to achieve proper implementation of MiFID II, they seek for longer transitional period to enable the commodity derivatives trading business to comply with the new requirements, also taking into account that the scope my be dependent on implementing measures.

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