

VALDIS DOMBROVSKIS

*Vice-President of the European Commission*

International Swaps and Derivatives Association, Inc. (ISDA)

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Brussels,  
Ares (2019)

Dear [REDACTED]

Thank you and the co-signing associations for your letter dated 28 February 2019 concerning the equivalence of UK derivatives trading venues under EMIR and MiFIR in a no-deal Brexit scenario.

First of all, let me stress that the European Commission continues to believe that an orderly withdrawal of the United Kingdom, based on an Agreement, is the best outcome. As the Commission has repeatedly pointed out, a disorderly withdrawal of the United Kingdom from the European Union would have negative consequences, also in the EU27. This applies to all sectors, including financial services. For that reason, the Commission has consistently called on all stakeholders to prepare for all scenarios<sup>1</sup>.

Following close cooperation with the relevant EU authorities, and joint work of the European Central Bank and the Bank of England, the Commission has assessed possible financial stability risks for the financial system related to a disorderly withdrawal. The Commission has published temporary and conditional equivalence decisions with respect to UK central counterparties and central securities depositories, which were adopted on 19 December 2018.

Concerning the MiFID share trading obligation, the Commission welcomes that ESMA is clarifying the application of the share trading obligation in case of a no deal Brexit scenario. I have asked my services to monitor market developments and to continue very close cooperation with ESMA on this matter.

<sup>1</sup> See for example the three preparedness Communications "Preparing for the withdrawal of the United Kingdom from the European Union on 30 March 2019 (19 July 2018); "Preparing for the withdrawal of the United Kingdom from the European Union on 30 March 2019: a Contingency Action Plan (13 November 2018) and "Preparing for the withdrawal of the United Kingdom from the European Union on 30 March 2019: Implementing the Commission's Contingency Action Plan" (19 December 2018) and several notices to stakeholders in the area of financial services, including with regard to markets in financial instruments, 8 February 2018

[https://ec.europa.eu/info/sites/info/files/file\\_import\\_financial\\_instruments\\_en.pdf](https://ec.europa.eu/info/sites/info/files/file_import_financial_instruments_en.pdf)

I note your concerns about possible higher costs including for non-financial counterparties and small financial counterparties. I would like to stress that the European Market Infrastructure Regulation (EMIR) includes exemptions for non-financial counterparties which transact to hedge their risks, and I encourage you to discuss the application of these rules with the relevant competent authorities. Moreover, the EMIR Refit, recently agreed by the European Parliament and the Council, will provide simpler and more proportionate rules for over-the-counter derivatives, helping to reduce costs and regulatory burdens for both non-financial counterparties and small financial counterparties.

Concerning the MiFIR derivatives trading obligation, and as recently stated by ESMA<sup>2</sup>, it appears that most UK trading venues that offer trading in derivatives subject to the trading obligation are in the process of establishing new trading venues in the EU27 and plan to offer the same product portfolio in the EU27 as they are currently offering in the UK. ESMA also noted there are already trading venues in the EU27 offering trading in derivatives subject to the trading obligation. On this basis, ESMA's public statement notes that, at this point in time, there is no evidence that market participants will not be able to continue meeting their obligations under the trading obligation for derivatives in case of a no-deal Brexit and in the absence of an equivalence decision covering UK trading venues. ESMA nevertheless commits to continue monitoring how liquidity develops post-Brexit and whether markets will be sufficiently liquid to allow EU27 market participants to execute transactions in derivatives subject to the trading obligation on eligible trading venues.

The Commission remains available for further contacts with regard to contingency planning and the specific situation in area of financial services.

Yours sincerely,



Valdis DOMBROVSKIS

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<sup>2</sup> ESMA Statement on the Impact of Brexit on MiFID II/MiFIR and the Benchmark Regulation (BMR), 7 March 2019, [https://www.esma.europa.eu/sites/default/files/library/esma70-155-7253\\_public\\_statement\\_mifidii\\_bmr\\_provisions\\_under\\_a\\_no\\_deal\\_brexit.pdf](https://www.esma.europa.eu/sites/default/files/library/esma70-155-7253_public_statement_mifidii_bmr_provisions_under_a_no_deal_brexit.pdf)