



Brexit: Energy and commodities trading

September 2016



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At a glance:

- EMIR, REMIT, MAR and MiFID I continues to apply to the UK until formal exit from EU
- MiFID II will have a significant impact on EU energy and commodity markets
- Regulated markets may have more political influence in a post-Brexit UK

In the short term, overseas groups with investments in the UK will continue to be able to access EU's commodity derivative markets without significant impact.

Foreign energy and commodity firms trading commodity derivatives in the EU for hedging or speculative purposes will be able to continue to do so under the existing regulatory regimes.

The UK is still a member of the EU until its formal exit and so EU law continues to apply. That is both in the form of directly applicable regulations, such as EMIR (which covers over-the-counter derivative transactions) REMIT (regulating the wholesale energy market) and MAR (market abuse), as well as directives which have been implemented into national law, such as the first Markets in Financial Instruments Directive (MiFID I).

Medium term: 2018 until 2019/2020

Companies should also prepare for MiFID II, which will form the cornerstone of EU financial markets, since it will apply from January 2018 — before the expected date of the UK's exit.

MiFID II will have a significant impact on EU energy and commodity markets in a number of ways. It will introduce limits on the size of a position a person can hold in commodity





derivatives traded on EU-trading venues, and economically-equivalent OTC contracts. It will require EU commodity derivative participants to undertake an 'ancillary business' test if they want to remain exempt from authorisation by financial regulators. Lastly, following a transitional period, non-EU commodity derivative participants will need to be subject to an equivalent regime if they want to access EU markets

These changes may see firms requiring regulatory authorisation to continue existing activities or exiting product lines, amending operating models or even relocating certain business out of the EU to jurisdictions such as Singapore. Foreign companies should keep a watching brief as market participants begin to grapple with implementation in earnest over the coming months.

Long term: 2019/2020 and beyond

The post-Brexit regulatory environment will depend on the nature of the future relationship between

the UK and the EU. For example, if the UK remains part of the European Economic Area (EEA), alongside countries including Norway, most European regulation such as MiFID II is likely to continue to apply.

In the case that the UK does not join the EEA and an amended regime cannot be agreed, overseas energy and commodity firms with a regulated UK entity trading derivatives will no longer be able to use the MiFID II passport to provide investment services and activities throughout the EU. Instead, they will need to look to the MiFID II third country regime to access the EU market, or establish a MiFID-compliant EU branch or subsidiary. Non-financial firms accessing EU and UK markets for own use purposes are unlikely to be impacted.

It is too early to say what the post-Brexit UK regime will look like, particularly given incentives in MiFID II to retain an equivalent regime, and the UK's G20 commitments around the integrity of commodity markets.

Of course, strategy decisions about location will be based on more than just regulation. Factors such as population, GDP, commodities demand, time zones, skills and experience undoubtedly play a part. Regulated markets like the London Metals Exchange, ICE Futures Europe and CME Europe, are also important. These venues may have more political influence in a post Brexit-UK that is keen to maintain its pre-eminent status in global commodities trading.

Long term: 2019/2020 and beyond

It is important to keep in mind that nothing changes immediately. Foreign energy and commodity participants with operations in the EU should continue with plans to implement upcoming EU legislation. However, they should also start to consider their strategic options for accessing the UK and EU markets in the post-Brexit environment. Vitally, they should keep these plans fluid as negotiations develop and the future becomes clearer.

Note:

(a) MiFID II applies throughout the EEA

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CREATE | CRT070328B | October 2016.