



Commissioner Mairead McGuinness

Directorate-General for Financial Stability, Financial Services and Capital Markets

European Commission

1049 Bruxelles / Brussels

Belgium

16 September 2021

Dear Commissioner McGuinness,

Equivalence and Recognition in relation to UK CCPs

The Joint Associations¹ are appreciative of the work carried out by the European Commission so far to safeguard financial stability and to ensure continuity of access for EU market participants to UK central counterparties (CCPs). In particular, we welcome the Commission's

¹ The Joint Associations are AFME, AIMA, EAPB, EBF, EFAMA, FIA, ICI, ISDA, SIFMA AMG. Information on each association is set out in Annex I to this letter.

adoption on 21 September 2020 of a time-limited equivalence decision determining that the regulatory and supervisory framework applicable to CCPs established in the UK is equivalent in accordance with Regulation (EU) No 648/2012 (EMIR)².

We also appreciate the Commission's work in finalising the changes to the recognition regime for non-EU CCPs under EMIR 2.2³, which significantly increased ESMA's role in overseeing Tier 2 non-EU CCPs, enabling ESMA and other EU regulators (including central banks of issue (CBIs) and national competent authorities (NCAs)) to undertake independent supervisory activities and analysis.

As the time-limited equivalence decision for UK CCPs currently expires on 30 June 2022, we respectfully request the Commission to provide clarity as soon as possible and well in advance of March 2022 in order to prevent negative financial, commercial, operational and level playing field effects on EU counterparties and clearing members and to enable continued access to global pools of liquidity after 30 June 2022.

The Joint Associations (representing the broadest group of market participants) respectfully ask the Commission to **extend the equivalence decision for UK CCPs** for the reasons set out below.

1. Executive summary

- We welcome the Commission's decision to grant a time-limited equivalence decision in respect of UK CCPs. However, when this time-limited equivalence decision expires on 30 June 2022, there remains a significant risk of disruption to clearing for EU firms and to their access to global markets⁴.
- Because of this potential for major disruption due to an inability to clear on UK CCPs, and in consideration of the enhanced powers available to ESMA and EU CBIs and the protections granted to EU clearing members and their clients under EMIR 2.2, and the UK's continued adherence to EMIR provisions, the Joint Associations (representing the broadest group of market participants) ask the Commission to **extend the equivalence decision for UK CCPs**.
- We recognise that the Commission and in particular ESMA need to consider carefully the potential financial stability impact of substantial, systemically important clearing services being provided in the EU by non-EU CCPs, and we remain convinced that

² <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32020D1308&from=EN>

³ https://www.fia.org/sites/default/files/2020-07/FIA_ISDA_Final%20response_Comparable%20Compliance_20200709%20%28002%29_0.pdf

⁴ In fact, this disruption would be experienced from three months before the expiry date, due to the notice periods UK CCPs will have to observe for their members in advance of the expiry of the temporary equivalence.

EMIR 2.2, with its new enhanced recognition framework, gives ESMA appropriate powers to deal with any such financial stability related concerns that may be identified.

- The industry recognises the European Commission's objective of growth of EU financial market infrastructures and supports the growth of derivatives transaction clearing in EU CCPs. Indeed, the services provided by EU CCPs enhance choice and competition in derivatives clearing, to the benefit of market participants. The build-up of liquidity on EU CCPs should be voluntary and market driven and needs to be given sufficient time to develop. There is already clear evidence of liquidity flowing towards EU CCPs, and our expectation is that this will continue.
- We are concerned that if the Commission allows the time-limited equivalence decision to expire, EU clearing members would not only lose access to UK CCPs that have been determined to be of such substantial systemic importance that they can no longer be recognised, but they would also lose access to UK CCPs that are not systemically important and that would otherwise be able to benefit from recognition under EMIR 2.2.
- We would welcome the opportunity to discuss with the Commission the risks to the EU that the Commission perceives, should UK CCPs continue to be able to offer clearing services to EU market participants after 30 June 2022. The ongoing uncertainty confronting EU clearing members and their clients is already negatively impacting their clearing business. If the Commission is considering allowing the time-limited equivalence decision to expire, we would also welcome the opportunity to discuss the solutions that the Commission is considering to mitigate any potential market disruption that may result, and the time that may be needed to develop and implement those solutions.
- In the meantime, the Joint Associations will continue to work with the Commission and other EU authorities to achieve the least disruptive outcomes for EU capital markets.

2. A longer-term approach to equivalence for UK CCPs is necessary and appropriate to mitigate the risk to EU firms of market disruption

If the current time-limited equivalence decision for UK CCPs is allowed to lapse at the end of June 2022, there is a significant risk of market disruption for EU clearing members and their clients.

Market participants have carried out a huge amount of work since June 2016 to prepare for the UK's departure from the EU, including setting up new EU clearing units, re-papering EU clients and re-organising their access to EU and UK trading venues, CCPs and other market infrastructure. However, there are a number of factors that limit their ability to prepare for the expiry of the current time-limited equivalence decision for UK CCPs at the end of June 2022, including the fact that the range and depth of clearing services offered by the UK CCPs is still

not replicated in the EU⁵. This means that there are certain products that cannot currently be cleared at all outside of UK CCPs, and even where products can be cleared through EU CCPs, there is not always sufficient liquidity meaning that the financial stability risks involved with this activity will be increased (as risks are mutualised among a smaller number of clearing members).

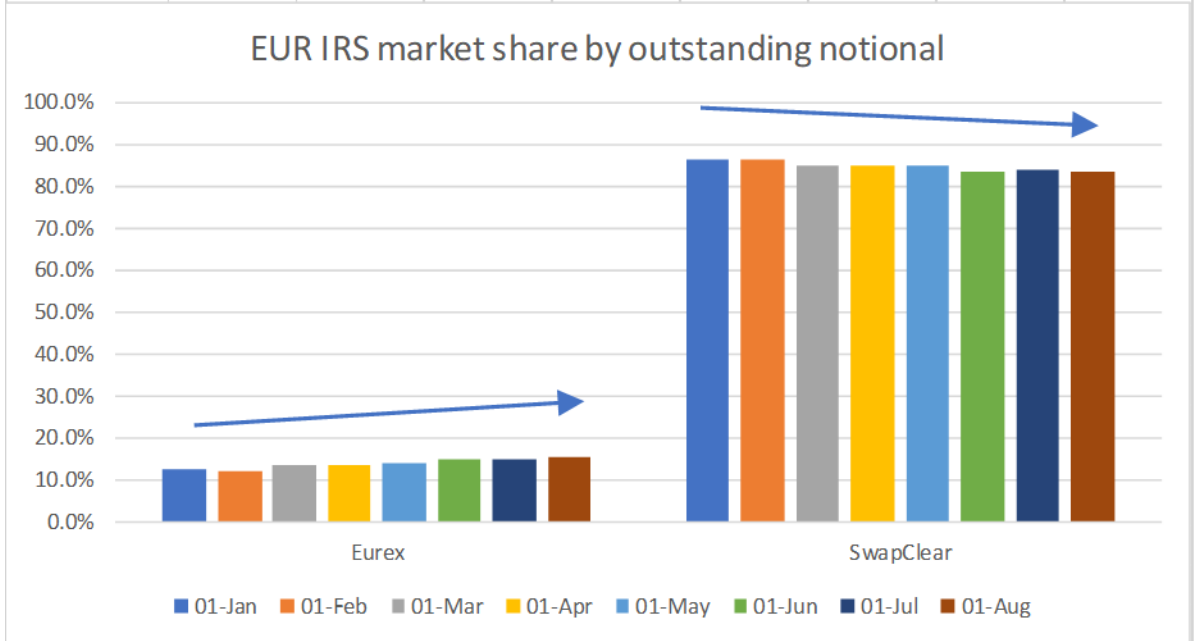
It is also worth noting that the location of clearing is driven by commercial factors including client demand, so moving clearing to EU CCPs is not entirely within the control of the EU clearing members. However, we would also note that based on publicly available data we are starting to see a natural, gradual shift of activity to EU CCPs and we would welcome an extension to the current time-limited equivalence decision to allow this natural, market-led shift to continue and also to allow EU CCPs to continue to develop their offering.

Based on publicly available information from LCH and Eurex (as set out in the chart below), just over the period from 1 April – 1 July 2021 Eurex's market share for euro denominated IRS has increased at a rate of around 0.5% per month, while LCH's share has decreased by a similar amount⁶.

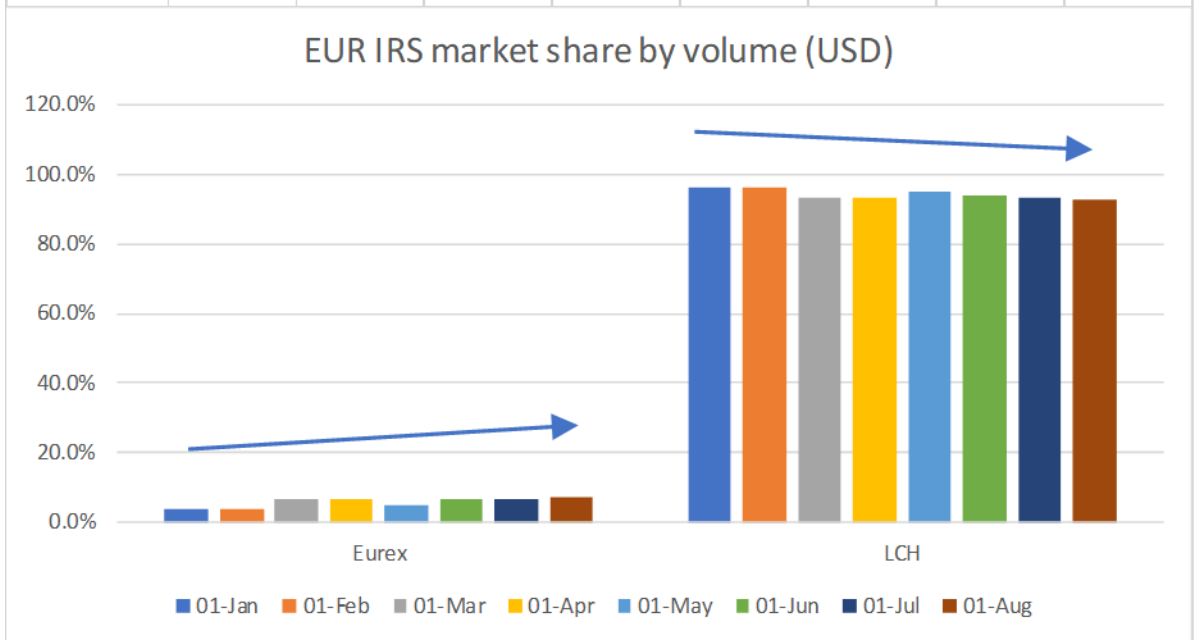
⁵ It is important to note that UK CCP access is necessary to clear products subject to the EMIR mandatory clearing obligation as well as products which are not. For example, IRS in CZK and a number of other currencies of smaller Member States are not cleared anywhere in the EU. As a result, de-recognition of UK CCPs would directly impact financial institutions in those smaller Member States, forcing them to cease clearing large numbers of IRS that are currently cleared through UK CCPs. Other products not subject to the clearing obligation (e.g., commodity derivatives) are often only cleared at UK CCPs and while EU counterparties could continue to (indirectly) clear those through UK CCPs, the regulatory capital costs of exposures to non-recognised UK CCPs will raise the cost of clearing for those products significantly and may even be prohibitive, thus reducing access to clearing facilities for EU clients even further. In this context we note that there is a 1250% risk weight for default fund contributions to non-qualifying CCPs, compared to a typical risk weight of a single digit / low double digit (with a floor of 2%) for QCCPs.

⁶ We note that the data in the graphics below is based on gross notional outstanding rather than new trade registrations. While data based on new trade registrations may be a better measure for liquidity, there is limited publicly available information on trade registrations (and gross notional outstanding gives a good indication of the amount (rather than the number) of transactions cleared by each CCP).

	01-Jan	01-Feb	01-Mar	01-Apr	01-May	01-Jun	01-Jul	01-Aug
Eurex	12.4%	12.1%	13.6%	13.5%	14.0%	15.2%	14.8%	15.3%
SwapClear	86.2%	86.6%	85.1%	85.1%	84.8%	83.6%	84.0%	83.5%



	01-Jan	01-Feb	01-Mar	01-Apr	01-May	01-Jun	01-Jul	01-Aug
Eurex	3.6%	3.7%	6.7%	6.4%	5.1%	6.4%	6.6%	7.0%
LCH	96.4%	96.2%	93.3%	93.5%	94.8%	93.6%	93.4%	92.9%



Source: [Clarus CCPView](#)

It is worth recalling the global nature of the EUR IRS market, with non-EU firms providing the majority of the liquidity therein. It is consistent with the EC's strategic objective regarding the international role of the Euro for EU firms to be able to continue to play a role in this global

liquidity pool, allowing them to manage risk efficiently and compete with their international peers.

In the event that the equivalence decision is allowed to lapse, there are continuing concerns about the impacts that a large, simultaneous close-out of positions at UK CCPs (and corresponding opening of positions at EU CCPs) would have on the market. Other concerns include market fragmentation and lack of liquidity at EU CCPs, as well as the concerns regarding increased costs and reduced risk mutualisation discussed above.

In addition, removing the ability of UK CCPs to obtain recognition in the EU would limit the direct oversight and visibility that ESMA and relevant EU national competent authorities (including EU CBIs) would otherwise have had over global derivatives markets cleared in the UK, as ESMA would cease to have any supervisory role in relation to UK CCPs and EU NCAs would cease to have a role in the colleges of supervisors for UK CCPs.

In particular, allowing the equivalence decision for UK CCPs to lapse would mean that the supervisory powers granted to ESMA and protections under EMIR 2.2 would no longer be available in relation to UK CCPs. EMIR 2.2 provides a key role for EU authorities in crisis scenarios, giving EU Central Banks of Issue additional powers (including in the event of a crisis) as well as visibility over euro payment and collateral flows.

It is important to note that derecognition of UK CCPs could also impact cash markets. Some of the possible impacts for equities clearing could include EU venues and EU market participants being unable to clear equities at UK CCPs and the cessation of interoperability in equities markets, at least between LCH Ltd and EuroCCP NV, which clear for several important European markets and provide the choice of a single CCP for clearing members. Interoperability has been successful in reducing costs of clearing for equities at these CCPs without impacting their safety.

3. EMIR 2.2 provides ESMA with effective supervisory powers for overseeing Tier 2 CCPs

EMIR 2.2 has introduced an enhanced recognition regime giving ESMA the power to review existing CCP recognition decisions as well as to assess the systemic importance of non-EU CCPs providing services under the Article 25 EMIR recognition regime and to adjust the supervisory measures applicable to those non-EU CCPs accordingly. EMIR 2.2 also makes specific provision for a situation where recognition of a non-EU CCP is withdrawn, setting out a clear process including protections and safeguards for EU clearing members and their clients⁷.

Under this revised recognition regime, ESMA has assessed the three currently recognised UK CCPs as being either Tier 1 (non-systemically important) or Tier 2 (systemically important or likely to become systemically important) CCPs. Both Tier 1 and Tier 2 CCPs may still obtain

⁷ A key safeguard under EMIR 2.2 is the requirement for ESMA to endeavour to minimise potential market disruption and provide for an appropriate adaptation period following any withdrawal

recognition under EMIR, so long as the relevant conditions are met (including existence of a Commission equivalence decision and compliance or comparable compliance with relevant EMIR requirements for Tier 2 CCPs).

We urge the Commission to address its concerns regarding the systemic importance of the UK CCPs by relying on the enhanced supervisory powers that EMIR 2.2 gives to ESMA and to the Central Banks of Issue in relation to Tier 2 CCPs (in conjunction with the enhanced Memorandum of Understanding between ESMA and the Bank of England)⁸. ESMA's ongoing assessment of non-EU CCPs' systemic importance to EU financial stability should provide further assurance.

We also understand that further assurance may come from the fact that UK CCPs, including LCH Limited and ICE Clear Europe, hold TARGET2 accounts, giving the ECB visibility over euro collateral flowing through these CCPs.

4. UK measures to "onshore" EMIR measures for supervision of CCPs and effective equivalent recognition of EU CCPs

As noted in the recitals to the Commission's equivalence decision, the legal and supervisory arrangements of the UK currently meet all of the required conditions for equivalence set out in Article 25 EMIR⁹.

The recitals to the Commission's equivalence decision also state that the UK's legal and supervisory arrangements applicable to UK CCPs should only be considered equivalent "where the requirements applicable to CCPs in United Kingdom domestic law are maintained and continue to be effectively applied and enforced on and after [1 January 2021]". The recitals go on to state that "[...] the Commission is able to amend, suspend, review or revoke this Decision at any time, in particular where developments occur in a third country which affect the equivalence decision".

There is no indication from the UK that these requirements will cease to be effectively applied and enforced, and in fact there are clear indications that the UK will continue to require UK CCPs to comply with legally binding requirements equivalent to those in Title IV EMIR, that it will continue to subject UK CCPs to effective supervision and enforcement and that it will

⁸ https://www.esma.europa.eu/sites/default/files/library/esma70-152-2531_esma-boe_mou_on_uk_ccps.pdf

⁹ Under Article 25 EMIR, three conditions must be fulfilled in order for the Commission to determine that the legal and supervisory arrangements of a third country regarding CCPs are equivalent to those laid down in EMIR:

- the legal and supervisory arrangements of the third country must ensure that CCPs in that country comply with legally binding requirements equivalent to those in Title IV EMIR;
- CCPs in that jurisdiction are subject to effective supervision and enforcement on an ongoing basis;
- The legal framework of the third country provides for an effective equivalent system for the recognition of CCPs authorised under a foreign legal regime.

continue to provide for an effective equivalent system for the recognition of third country CCPs, on an ongoing basis for the foreseeable future¹⁰.

In particular, the UK's Temporary Recognition Regime allows non-UK CCPs (including EU CCPs) to continue providing services to UK clearing members for a period of at least 3 years following the UK's withdrawal from the EU (i.e., until at least 1 January 2024). While the Bank of England may withdraw the temporary deemed recognition of a non-UK CCP, the European Commission can also amend, suspend, review or revoke an equivalence decision at any time.

In addition, the UK has announced further measures designed to strengthen the regulation of UK CCPs, including:

- An enhanced regime for recovery and resolution of UK CCPs¹¹;
- A Senior Managers & Certification Regime for CCPs¹²;
- CCP stress testing by the Bank of England¹³.

5. Request for grant of extended equivalence decision

Request for extension of current equivalence decision or non-time-limited equivalence decision

To provide certainty to the market, we would respectfully request that the Commission grant an extension to the current equivalence decision, or a non-time-limited equivalence decision in relation to UK CCPs.

If the Commission does intend to grant a further time-limited equivalence decision, we would ask the Commission to consider granting this for a longer period of time than the current equivalence decision, in order to avoid uncertainty for EU clearing members and their clients.

This extension would ensure that EU counterparties may continue to satisfy their clearing obligation under EMIR through UK CCPs without disruption in the short term, that EU clearing members can continue to offer clearing services on UK CCPs to their clients, that EU CCPs can continue to develop the clearing services that they offer and also that the UK CCPs that currently benefit from temporary recognition would fall under the same regime as other non-EU CCPs that are currently recognised in the EU once EMIR 2.2 has come fully into effect. If ESMA considers that UK CCPs are systemically important, they will need to comply with

¹⁰ In particular, in the UK Chancellor's 2021 Mansion House speech outlining the UK's roadmap for financial services, delivered on 1 July 2021, the Chancellor stated that "The UK already has one of the world's most robust regulatory regimes for central counterparties. And our plan is not to weaken but strengthen that regime, because we believe in high-quality regulation". <https://www.gov.uk/government/speeches/mansion-house-speech-2021-rishi-sunak>

¹¹ <https://www.gov.uk/government/consultations/expanded-resolution-regime-for-central-counterparties-ccp-consultation>

¹² https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1003748/SMCR_Condoc_002_.pdf

¹³ <https://www.bankofengland.co.uk/paper/2021/supervisory-stress-testing-of-central-counterparties>

additional requirements under EMIR 2.2 in the same way as other non-EU CCPs, and if ESMA considers that they should no longer be recognised, the protections and safeguards agreed under EMIR 2.2 will be available to EU counterparties clearing through those UK CCPs.

Timing for extension of equivalence decision

We would also request the Commission to inform EU market participants of its intention as soon as possible and before March 2022 to address the ongoing uncertainty confronting the Joint Associations' EU clearing members and their clients, which already negatively impacts their clearing business. If the temporary recognition is to expire at the end of June 2022, UK CCPs will need to take steps to terminate the membership of relevant EU clearing members in good time in order to avoid breaching the prohibition under Article 25 EMIR.

The notice periods for termination of membership under the relevant CCP rulebooks would begin as early as 3 months prior to the date of expiry of the equivalence decision. As a result, in the absence of confirmation that the temporary equivalence decision will be extended, UK CCPs will need to start serving termination notices in March 2022 so that EU clearing members' membership will terminate by 30 June 2022.

We thank you for taking the time to consider our views on this issue. The Joint Associations will continue to work with the Commission and other EU authorities to achieve the least disruptive outcomes for EU capital markets, but if you have questions on any of the issues addressed in this letter, we are happy to discuss them with you at your convenience.

Yours sincerely,

Thalia Chryssikou
Chair
AFME

Jack Inglis
Chief Executive Officer
AIMA

Marcel Roy
Secretary General
EAPB

Wim Mijs
CEO
EBF

Tanguy van de Werve
Director General

Walt Lukken
President and CEO

EFAMA

FIA

/s/ Jennifer Choi
Chief Counsel
ICI Global

Scott O'Malia
CEO
ISDA

Timothy W. Cameron, Esq.
Asset Management Group – Head and Managing Director
SIFMA

Annex I

Information about the signatory organisations

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 AIMA

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 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 programs and sound practice guides. AIMA works to raise media and public awareness of the value of the industry.

About EAPB

The European Association of Public Banks (EAPB) gathers member organisations (financial institutions, funding agencies, public banks, associations of public banks and banks with similar interests) from 15 European Member States and countries, representing directly and indirectly the interests of over 90 financial institutions towards the EU and other European stakeholders. With a combined balance sheet total of about EUR 3,500 billion and a market share of around 15%, EAPB members constitute an essential part of the European financial sector.

About EBF

The European Banking Federation is the voice of the European banking sector, bringing together 32 national banking associations in Europe that together represent a significant majority of all banking assets in Europe, with 3,500 banks - large and small, wholesale and retail, local and international – while employing approximately two million people. EBF members represent banks that make available loans to the European economy in excess of €20 trillion and that reliably handle more than 400 million payment transactions per day. Launched in 1960, the EBF is committed to a single market for financial services in the European Union and to supporting policies that foster economic growth.

About EFAMA

EFAMA is the voice of the European investment management industry, which manages over EUR 27 trillion of assets on behalf of its clients in Europe and around the world. We advocate for a regulatory environment that supports our industry's crucial role in steering capital towards investments for a sustainable future and providing long-term value for investors.

More information is available at www.efama.org.

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 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\$38.7 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, Brussels, Hong Kong, and Washington, DC.

About ISDA

Since 1985, ISDA has worked to make the global derivatives markets safer and more efficient. Today, ISDA has more than 950 member institutions from 76 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 SIFMA AMG

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. For more information, visit <http://www.sifma.org/amg>.