Summary Comments

The London Energy Broker's Association and the European Venues and Intermediaries Association [together here "LEBA"], welcome this opportunity to comment on the FCA proposed reforms to the UK regime for the trading of commodity derivatives because we wholeheartedly endorse the need to reform the applicable rules by streamlining and simplifying the relevant requirements in line with the IOSCO standards for Commodities and their principles for effective regulation. We are answering this consultation in the capacity of both trading venue operators and as investment firms who arrange and bring about trades in commodity derivatives. It's evident that our members also operate organised marketplaces [OMPs] and match spot transactions which are activities that fall outside the scope of MiFID and therefore this response.

Clearly the extensive reforms relating to commodities that were introduced within the MiFID2 framework were not fit for purpose. Across Europe they have already been subject to both reviews and "quick-fixes," for all of which, LEBA was a keen proponent. Whilst the association also advocated for the equivalent changes in the UK, as generally supported right across the wholesale markets stakeholders, which HMT introduced as the initial part of the Wholesale Markets Review.

Now that the WMR has been retitled, via the Edinburgh Reforms, as the *smarter regulatory framework* (SRF), our responses to this consultation essentially form a plea to the FCA to recreate a simple and straightforward ruleset for commodities which can be simply understood and applied without the complexities or undue burdens which characterised that MiFID2 legislation because it was in the main part a political construction, framed against the backdrop of high fuel and agricultural prices. In short, and in contrast to the rather repetitive question by question answers below, our simple response to the FCA here is not to get trapped the type of loop into which Beckett inserted Vladamir and Estragon[1] or which their countryman Dave Allen paraphrased as, "*I wouldn't start from here if I were you*."

Notwithstanding the very necessary coordination to the IOSCO standards, these proposals still fail to meet those objectives, largely because they seek to reset the MiFID2 rules, rather than taking the spirit of the WMR and building from the approaches that UK deployed prior to 2013. Forwards and Futures are not the same instruments. 'Godot' will only turn up when the framework is reset to build of the practical exemptive regimes such as those widely utilised prior to the "futurization" [*sic*] and "non-MTF" transitions in the buildup to EMIR and MiFID2.

As proposed, the draft rules in CP23/27 are couched entirely in that "futurization," seek to reset only from 2018 and solely observe the activities of the two main exchange vertical siloes operating in the UK and seek to correct for supervisory and market events that have impacted these firms. This creates a top-down framework that is neither simply, nor widely applicable. Whilst we warmly welcome and completely endorse the proactive moves to delegate rules to the trading venue level, we consider that specific supervisory matters should not determine the framework rules, because they are inherently narrowly applicable to product, to venue and to events in time. This approach, i.e. backwards solving for events such as the LME Nickel

[1] Waiting for Godot - Wikipedia

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suspension, or for oil price spikes, makes for poor regulations by inverting the principle-led approach.

We consider this proposed approach is generally misconceived when applied as high-level handbook rules, when the shortcomings that are the target of the proposals could only be dealt with by two very specific firms. Rather, whatever outcomes that the FCA is seeking should be achieved by prescribed supervisory measures with those particular RIEs. The FCA has multiple tools available to achieve this, for example through the RIE regime or as VRECs.

The proposals seek to supervise the exchange traded landscape of the UK as currently observed rather than setting the framework and principles for the commodities regime as a whole. For example, should any MTF or OTF seek to offer related contracts, the proposals as they stand would make that impossible. Trading venues do not know the positions of their market participants. Nor do they know the global client chain, and neither do they know hedging requirements or related positions. Nor do trading venues that are not futures exchanges handle "lots."

Rather, it is the CCPs and CSDs, together with certain other post-trade financial market infrastructures such as TRs, SDRs, Prime Brokers and FCMs that should be the appropriate object of the requirements proposed in chapters 3, 4, 5 and 6. The proposal in the consultation makes the self-same mischaracterisation as those in MiFID2 of confusing a trading venue which handles flow, with a risk and position repository which handles risk and ownership. We consider this to be the opportune time to correct that mistake.

Some of the approaches proposed in the consultation, notably in respect of global position reporting and related contracts are also explicitly extra-territorial and impossible to police. Such proposals run against many of the principles of good regulation, but also fall foul of the historical experiences, notably those early footnoted Dodd Frank reforms a decade ago, through the US acts and Regulation Q which gave rise to the Eurodollar markets several decades ago to the Smoot-Hawley Tariff Act and the Glass-Steagall legislations of the Great Depression in the US.

When we look as to whether these proposed changes would make it simpler and more effective for member firms to enter into the business of offering any of the set of 14 "Critical Contracts" proposed, these proposed rules appear to make that either impossible or uneconomic by dint of the barriers to entry. In seeking to reverse some of the MiFID2 measures, we do not consider that the FCA should also seek to reverse the competitive and openness ethos that was set into the principles underpinning MiFID, although we acknowledge that it is commonplace for many regulatory frameworks to solidify the market power of the incumbents.

Finally, we note that the proposals do nothing to address the unnecessary complexities and the circularities created by MiFID2. We remain as unsure as to the meaning of what is an "OTC derivative," nor on the establishment of the commodity spot versus forward boundary as we were seven years ago and remain puzzled why the FCA opts to retain the impenetrable jargon of PERG C6, C7 and C10 when addressing the perimeter. We also remain unclear as to whether the measures which led all our members to relocate their commodity MTFs and OTFs from the UK to the EU will be addressed if not in this approach document Whilst several tenets of the UK approach will need to wait for the creation of the "Designated Activities Regime [DAR], it's

difficult to assess proposals for the commodity derivatives perimeter, as the second part of this consultation seeks to do, without much more explicit reference to that envisaged regime which in itself seeks to recreate some of the pre MiFID2 oil and energy market participant specificities.

We urge the FCA to reassess this approach by considering the UK framework that existed prior to 2013 and building from that point where the UK hosted just about the entirety of the global wholesale commodity marketplace[2]. We would advocate that the FCA reassess the scope and intention of this consultation as the production of applicable guidelines to the supervision of UK RIEs rather than addressing commodities within the MiFID architecture.

Answers to Questions

Q1: Taking into account the proposals outlined below, do you have any specific comments regarding implementation of the new regime? Please explain your answer.

We read the new regime to be predicated on the supervision of the two major vertical exchange silos in the UK.

Other MTF and OTF MiFIR trading venues, or indeed for any aspirant operators, which do not currently admit any of the set of 14 "Critical Contracts" proposed have little relevance to the requirements set out across Chapters 2 through 7 yet would still come under the extent of the regime by dint of their permissions.

This seems at once not only complicated and illogical, but also presents an insurmountable barrier to entry should any trading venue seek to compete with the incumbents and admit a "critical contract" or even a related one. Despite none of these instruments coming under the UK Clearing obligation, the approach from the FCA presumes an exchange traded derivative with monopoly restrictions.

We also note that the terminology deployed by the FCA throughout CP 23/27 only turns on "contracts" and "open interest". Since these are terms specific to the few RM/Exchange groups operating in the UK, the entire scope of the provisions should be set out in high level scope to be "ETDs" and therefore to specifically exclude OTC derivatives as an asset class or other derivatives and forwards not admitted to these exchanges.

As presented, CP 23/27 presents a confusing and overlapping scope, application, and exemptions array between ETDs, derivatives, and forwards. It also brings in the EMIR term "OTC derivative" contracts when it likely means bilateral trades concluded outside a UK MiFIR trading venue.

We would suggest that the FCA create a basic regime for trading venues that admit commodity derivatives including those that currently fall within C6, C7, C10; and a further enhanced regime,

[2] With the notable exception of agricultural commodities and their derivatives which have always evolved on continental nodes.

akin to that in the US for DCMs, for closely supervised vertical exchange siloes. We consider that the UK RIE legislative framework provides scope for this.

This would pass the test of enabling any other authorised trading venue to simply offer these designated instruments either without a clearing option or to offer any cooperating CCP either in the UK or a third country without requiring recourse to reporting back that CCPs operating metrics.

In addition to the above requirements for simplification, we would urge the FCA to set out its approach as to whether it considers precious metals, forwards on these contracts, their funding markets, and their derivatives to be commodities or commodity derivatives under this approach. If so then the values of such make the set of critical contracts pale into the background and again raises questions as to what the basis of this consultation paper is and whether it is misplaced.

In addition, we would also suggest that the FCA use its delegated powers to the RAO to review and simplify what the market and the authorities understand to be a commodity instrument, a spot contract, a forward and a derivative thereof. As it has stood for a number of decades, the interpretation of the perimeter guidance has puzzled law firms, market participants and the authorities alike. We would advocate that the FCA adopt and promote a perimeter closer to that in the US which nominates the dominant DCMs whilst offering mutual recognition and exemptions for third countries. This would never contemplate requesting position and risk information directly from third country participants.

Q2: Do you agree with the approach outlined, including the criteria to assess the criticality of contracts? If not, please explain why.

We disagree with the approach outlined to specify the criticality of contracts in MAR10A.

Rather the RM/ Exchange silo should first be specified and then those contracts or instruments which it has admitted to trading. This would make it clearer than any other MiFIR trading venue could compete without being unsure as to whether the scope applies to them. In the same vein, any definition of “Related Contracts” must be specified to be only those in the UK and admitted to that same RM/Exchange group.

Q3: Do you agree with the approach outlined above with respect to related contracts? If not, please explain why.

No. We believe that the approach to related contracts should be limited to contracts on the same exchange or within the same group.

“Related Contract”

The term "linked" is vague and not defined in the glossary. Given the opinion on scope above we may presume to apply the term, "linked" to mean "traded on exactly the same trading venue" in the absence of any other useful common understanding.

The term OTC is used but not defined as it is used here outside its conjunction as "OTC derivative." Where the term "OTC derivative" is used, this is not a MiFID or MiFIR definition and if therefore taken to be its meaning under EMIR, "OTC derivatives" are then defined very broadly, as derivative contracts that are not executed on a regulated market. This includes contracts traded on MiFIR trading venues MTFs and OTFs. In assuming the EMIR definition is remains unclear as to whether the FCA means a regulated market to be a UK "RIE" or something other than that.

The definition as proposed could feasibly include any instruments admitted to trading on an OTF or an MTF in the UK. Should the operator of an OTF or MTF admit an instrument or contract ostensibly similar to any critical contract, it is apparent that it would be unable to fulfil the proposed requirements for a Related Contract because counterparties may not choose to CCP clear those contracts, or if they did, then the venue would not know the position data in any CCP which could novate those trades.

In any interpretation it does not appear that the proposals could understood without significant assumptions and legal advice. They fail to meet any requirement to be simple, effective, and straightforward. They should be withdrawn.

Further, the FCA should use more prescriptive terminology than either the terms "OTC" or "derivative", and especially their conjunction, in light of widespread organised venues with rulebooks both under MiFIR and external to it.

"Related Overseas Commodity Derivative Contract"

The definition as proposed could feasibly include any instruments admitted to trading on a similar EU venue, a voluntary product on a SEF in the US or on an RMO in Singapore. This is wrong and the scope should be constrained to those contracts admitted to overseas venues solely within the same group as the entity in the UK.

For any instance where members firms operating any of these third country venues would admit an instrument or contract ostensibly similar to any critical contract, it is apparent that it would be unable to fulfil any of the proposed requirements for a Related Contract not only because they would be outside the legal scope of the UK, but again because counterparties' may not choose to CCP clear those contracts, or if they did, than the venue would not know the position data in any CCP which could novate those trades.

In any interpretation it does not appear that the proposals could understood without significant assumptions and legal advice. They fail to meet any requirement to be simple, effective, and straightforward. They should be withdrawn.

Q4: Are there any specific types or classes of contracts that should not be included in the related contract concept? If so, please explain why.

The related contract concept should be limited solely to those specific contracts that are admitted by trading venues operated within the same group control.

Q5: Do you agree with the proposed approach to update the list of critical contracts? If not, please explain why.

No, we disagree.

For instance, it would be reasonable to suppose that LNG contracts could be added to the list of critical contracts on that grounds that they are more relevant to UK security of supply than just about any of the 14 contracts suggested in the consultation. However, LNG contracts are arranged and executed by a range of firms who operate trading venues both in the UK and in third countries.

It is unclear from the proposals whether the FCA is limited to nominating LNG contracts that are only admitted to an RIE or whether the scope applies to trading venues as drafted but presumably unintended. Should one such ICE contract be nominated we do not think it could apply to any other similar forward contracts or to those forwards contracting actual liquids or vessels.

The same discussion could be reapplied to other important commodities. Further, the FCA might consider this approach in light of the "Open Access" requirements which were one of the more positive measures in MiFID2 yet dropped by the UK. This proposal also tilts against the principles of sound regulation.

Q6: In notifying us of a particular market that requires closer monitoring, are there any other factors that trading venues should consider? If you think there are, please explain what the additional factors are and why they should be considered.

The requirements to notify in 3.41 are vague.

It appears that the request for notification would be an informal process in the absence of a designated form via "RegData" and "FCA Connect." In this case the process should not be codified but subsumed under conduct expectations and the MarketWatch guidance. If the FCA expects a formal process for notification, then key metrics on activity size and location should be defined.

Q7: Do you agree with the list of critical contracts above? If not, please explain why.

We are unclear as to whether there is any qualitative or any quantitative basis to the assembling of the critical contracts. These should be set out under a principles-based approach and then evidenced and applied. They should then be regularly reviewed in public.

For instance, the inclusion of ICE NBP gas is puzzling. NBP is a minor contract across the European gas trading framework, accounting for about 9% of the total. Of that which does trade, only 50% trades on the futures contract. This makes the quantum of ICE NBP trivial and yet the FCA fails to set out any criteria by which it deems this to be critical.

Because similar arguments could apply across the proposed list, we would again advocate that the FCA reassess the scope and intention of this consultation to be applicable guidelines to the supervision of UK RIEs rather than the commodities asset class within the MiFID architecture.

Q8: Should any of the three cash settled contracts mentioned above (Dated Brent Future, Dubai 1st Line Future, Singapore Gasoil (Platts) Future) or the physically settled Permian WTI Future be added to the list of critical contracts? If yes, please explain why.

No.

Q9: Taking account of our proposals on position management and the reporting of additional information, do you consider that the risks arising from positions held OTC are adequately dealt with despite the fact that position limits do not apply to OTC contracts? If not, please explain why.

We consider that the proposals are inappropriate, legally unclear, complex, and likely undeliverable. We believe that they discourage any development of a multilateral, and therefore safer, infrastructure and in turn therefore hinder innovation and challenge. They also are without parallels in third countries and present an incentive to migrate activities away from the UK.

This approach should be replaced by a supervisory guidance approach to UK RIEs.

Q10: Do you agree with the approach and framework outlined above for setting position limits? If not, please explain why.

No, we disagree.

It follows from above arguments that the term “trading venues” should be replaced by the term UK RIEs because other than this subset, MiFIR trading venues do not have members per se and do not know the positions of their market participants.

We note that paragraph 4.26 states that the MiFID Org regulation applies to RIEs operating regulated markets but then resiles away from it. We cannot understand what the FCA considers coming in its place that could be practicable.

Q11: Do you agree with the criteria trading venues shall consider when developing their position limit setting methodology and when setting position limits? If not, please explain why.

No, we disagree.

It follows that position limit setting methodology should solely apply to UK RIEs operating regulated markets. As proposed, these requirements would exclude other MiFIR trading venues from seeking to offer the designated critical instruments. Furthermore, we cannot understand what the FCA considers coming in its place that could be practicable.

Q12: Do you agree with the approach to granting exemptions outlined above? If not, please explain why.

No, we disagree.

It follows that position limit setting methodology should solely apply to UK RIEs operating regulated markets. Prior to any exemptions, the scope should be appropriately tailored to the intention of the regulation such that MTFs and OTFs are excluded from the scope and requirements in chapters 3, 4, 5 and 6.

Whilst the hedge and market making exemptions are well intended, both fail on practical and logical grounds.

In wholesale commodity markets every trade is to some extent a hedge, but all are not simple to evidence in accounting standards. For the commodity markets operated by our members, hedge flags are ubiquitous and rightly so. We cannot discern any part of this proposal that satisfies the principles of good regulation.

The characterisation of liquidity providers and market makers remains one entirely done at the level of the trading venue contractual agreements and is entirely a commercial matter. We cannot see any benefits from raising these characterisations into the scope of regulation and supervision without setting formal thresholds and opening the procedures to challenge by regulators, auditors, and the wider market participants.

The approach to exemptions should be scrapped and replaced by a narrower and more appropriate scope.

Q13: Do you agree with the approach to the hedging exemption outlined above and the information to be provided to evidence use of the exemption? If not, please explain why.

No, we disagree. Again, the FCA approach presupposes that no new firms could approach the monopolies of the current RIEs without themselves being a large, autonomous, and vertically integrated silo. We think this denies innovation and agility.

Firms operating MiFIR trading venues who are not UK RIEs operating siloed regulated markets, in are in no position to know or fulfil the requirements suggested in paragraphs 5.31 and 5.33 despite the requisite KYC requirements. For instance, does the FCA suggest that the small, limited activity firm take on, as principal, the unwinds for the perceived positions of a middle east sovereign wealth fund or oil supranational?

Again, the FCA proposals appear to assume the only entities who could admit critical contracts are the current subset of UK RIEs. In this way they would either effectively prohibit MiFIR venues from admitting any critical contract or they would make no sense. The concept of a client chain should be narrowed to FCMs and GCMs or removed.

Q14: Do you agree with the approach to the pass-through hedging exemption outlined above and the information to be provided to evidence use of the exemption? If not, please explain why.

No, we disagree. The current approach, borne out of practicality, is for trading venues to only to consider the immediate market participant counterparty as the principal to the trading venue and not to look down any chain.

Whist we understand all the questions relating to Chapters 3, 4, 5 and 6 solely relate to the scope proposed (i.e. as RIE supervision). Should any MiFIR trading venue offer the same or similar instruments, then they would be unable, and it would be uneconomical and potentially illegal to request this source this data down a global client chain in third countries where privacy rules apply.

Q15: Do you agree with the approach to the liquidity provider exemption outlined above and the information to be provided to evidence use of the exemption? If not, please explain why.

No, we disagree. Again, the FCA approach presupposes that no new firms could approach the monopolies of the current RIEs.

The characterisation of liquidity providers and market makers remains one entirely done at the level of the trading venue contractual agreements and is entirely a commercial matter and generally not one that applies to any trading venues other than a very few regulated markets. For instance, RFS providers onto MTFs are never characterised as market makers, despite holding more balance sheet and providing far more liquidity than any exchange equivalent. It is therefore inappropriate to take a designation that has no basis in the FCA handbook or other statute to be a determinant in the regulatory perimeter.

Q16: Do you agree that trading venues should establish accountability thresholds for critical contracts?

No, we disagree. Again, the FCA approach presupposes that no new firms could approach the monopolies of the current RIEs. The approach to establish accountability thresholds should only apply to UK RIEs operating siloed regulated markets.

Q17: Do you agree with the approach outlined above and the factors that should be considered as part of the trading venues' accountability threshold setting methodology? If not, please explain why.

Some the same reasons as above, we read the FCA approach to suppose that no new firms operating trading venues could offer similar instruments to the monopolies of the current RIEs unless they also clear all their trades in those self-same clearing pools.

By the same token we would like to understand how the FCA proposals may accommodate the portability of CCP clearing or any introduction of "CCP interoperability," such that the FCA is building in systemic risk considerations into the new framework. Consequently, the approach to establish accountability thresholds should be revised such that it would only apply to UK RIEs operating vertically siloed regulated markets.

Q18: Do you agree with the set of conditions that result in the requirement to provide additional reporting? If not, please explain why.

No, we disagree. Questions 18, 19, 20 and 21 consider position reporting requirements.

We note that under MiFID2 to date there have been supervisory exemptions for MTFs and OTFs across all of Europe, such that the MiFID rules were disapplied where they did not make sense. This is because the trading venues could not know, nor legally or commercially demand the positions of their market participants. In all probability their market participants, as a cohort, would be in no position to know their exposures across their groups, let alone related, subsidiary, hedged and end-client risk. Certainly, such risks would have no common basis, ratios nor format.

Moreover, prior to MiFID2 the UK never had a framework for risk reporting to trading venues and it remains difficult to comprehend whether the underlying rationale here is a conduct issue or a prudential aspiration. We consider that the only position related value resides in managing delivery position squeezes, and prudential risk matters should continue to be conferred to the PRA as is currently the case.

Under this analysis, the rationale for any position reporting as part of MiFIR disappears. The FCA should remove these considerations and requirement as part of a reset back to 2013 rather than one to 2017 which reinforces the mistakes in MiFID2.

Q19: Do you agree with the information to be reported once the additional reporting requirement is triggered? If not, please explain why.

No, we disagree.

This information should be restricted to where it is relevant and available. This could only be certain physical delivery month situations in designated contracts.

Q20: Do you agree with the definitions of related OTC contracts and overseas contracts? If not, please explain why.

No, we disagree.

We remain unclear what the FCA intends to happen should, for instance, one of our member firms, who generally operate EU MTFs, OTFs and Remit OMPs; US SEFs; Singapore RMOs and further organised trading venues from Canada through Asia to Australia may admit to trading an instrument with a settlement or reference price which may result in being deemed a "related overseas commodity derivative contract."

For those market counterparties in that third country or any other, whether authorised firms or corporates, would they themselves come under a reporting obligation in the UK? This appears to be unenforceable and extraterritorial, whilst also raising questions about trading chains, and ultimate beneficial owners. Further, it's unclear what risk analysis the FCA would expect from this information given different contract properties, leverage, dates, and other optionality's.

We note that between the consultation text, the proposed handbook rules, and the proposed glossary, the FCA variously interchanges the terms; "related overseas commodity derivative contract;" "OTC contract;" and "OTC derivative." It's unclear, given the different treatment of definitions between EMIR using "OTC derivative" and MiFIR setting out a framework for regulated trading venues such that trades concluded on MTF and OTFs may become categorised as "OTC derivatives" under this FCA approach or they may not.

When taken to the various agreements the UK holds for mutual recognition it's unclear whether trades on organised platforms deemed by the UK to be equivalent to MTF and OTFs may be treated as in scope of the term overseas trading venue or whether those not given recognition, such as EU MiFIR venues, or those outside the ESMA recognition list, may not.

Q21: Do you consider that additional reporting requirements should apply at a group level rather than entity level for the reasons highlighted in paragraph 6.33 above? If not, please explain why.

We don't consider that the reporting requirements at trading venue level make any sense.

Further, we again note that the basis of the proposals considers ETDs and the expiries mechanisms of futures contracts. Even if practical, the entire scope of the proposals would need to be reset and defined as those orderbook traded contracts on specified UK RIEs and CCP cleared within that same silo.

Q22: Do you agree with the proposal for trading venues to develop a periodic market risk analysis report? Please explain your answer.

No, we disagree.

Again, we consider that whilst currently the specified critical contracts are only offered by UK RIEs, as a framework these proposals should be limited to the specified UK RIEs and not applicable broadly to trading venues. Clearly smaller firms operating an MTF or OTF would not be in a position to deliver the market risk analysis supposed by the proposals.

Q23: Do you agree that trading venues are best placed to determine for which contracts CoT reports should be published or do you have views on how the criteria should be amended? Please explain your answer.

No, we disagree. CoT reports were a MiFID2 concept that sought to mimic certain CEA provisions in the US, but which never made sense nor held any value. (*The US rules were developed to deal with logistical aspects of graded physical deliveries, principally in agricultural commodity futures.)*

Operators of MTF and OTFs could not know the positions of their market counterparties or other market participants. Since the advent of MiFID2 trading venues across both the UK and EU have not been asked to publish CoT reports by their NCAs for these very evident reasons. Again, we consider that whilst currently the specified critical contracts are only offered by UK RIEs, as a framework these proposals should be limited to the specified UK RIEs and not applicable broadly to trading venues. Clearly smaller firms operating an MTF or OTF would not be in a position to deliver the CoT reporting supposed by the proposals.

In respect of paragraphs 6.66 and 6.67 which discuss what links any trading venues other than IFEU and LME may have or develop with CCPs, we note that the FCA again takes the position that trading venues might know the position of their market counterparties and they might also know the subsequent client chains of these market counterparties. We are unclear why the FCA thinks this and how it considers such a disclosure mechanism could work for global market participants. Equally the FCA appears to consider that all possible contracts that may be deemed by itself to be critical contacts would be CCP Cleared in the UK, even in the absence of the FCA requiring any Clearing Obligation ["CO"]

Q24: Are there any other changes to the public reporting of aggregated positions that you consider appropriate? If yes, please explain the changes you propose and why they are necessary.

For reasons previously stated, we consider that public weekly aggregate position reports are not applicable to trading venues and should be removed from the handbook rules.

Clearly if any exchange-CCP vertical silo wishes to publish this information they are free to do so.

Q25: Do you agree with the proposed guidance on the AAT? If not, please explain why.

No, we disagree.

We do not consider that the FCA should need to make a statement to confirm the understanding of a term when that is in any case the long held and commonly understood meaning of a term that is ordinary common language meaning and also has been an important MiFID definition for almost a quarter of a century. This is superfluous.

On the second item, we do not consider it appropriate that the FCA hinge their rulebook on EU delegated regulations when it is in the process of unwinding RUEL. In seeking to be straightforward and clear, either the FCA should onshore those relevant aspects of REUL, or it should leave it in place.

Q26: Do you have any other views on the points outlined above?

We understand that the Wholesale Market Review has introduced the framework of the Delegated Activity Order [DAO] in order to provide for an appropriate and proportional treatment for commodity market participants that may be Non-financial counterparties. This has been well supported by industry and widely seen as a smart attempt to recreate the valuable aspects of the prior Energy Market Participants [EMPs] and Oil Market Participants [OMPs] regimes.

We refer to the comments in the introduction regarding relevance and sequencing. Given this framework, we can see no reason why the FCA should seek to also maintain vestiges of the MiFID2 ancillary regime [AAE] which has been a source of much comment and revision.

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