

## Provision of services

### 1. Could Brexit impact my ability to perform financial services on a cross-border basis?

Yes. In the event that the UK leaves the EU without an agreement on the cross-border provision of financial services, firms may find that their ability to continue their usual trading activities and/or providing services to EEA clients could be impacted, depending on their location and the types of activities being undertaken.

### 2. How could this affect my ability to access the LME and what is the LME doing to help?

Currently the LME is able to provide access to its systems in any EEA Member State as a result of provisions under MiFID II which mandate pan-European access for all regulated markets. After the UK has left the EU, these provisions will no longer apply to the LME and instead the LME's ability to provide access to its systems within the EEA will depend on the domestic rules of individual Member States. Of the EEA jurisdictions relevant to the LME's membership, we have identified those that require the LME to hold a licence or to apply for dispensation from the need to hold a licence in order to provide Members in that jurisdiction with access to its systems. We have applied to the national competent authorities of these jurisdictions accordingly. In doing so we anticipate being able to offer continued access to the LME's systems to our EEA Members.

### 3. How could this affect my ability to access LME Clear and what is LME Clear doing to help?

Currently, LME Clear is able to provide access to its systems to Clearing Members in any EEA Member State as a result of provisions under the European Market Infrastructure Regulation (EMIR). EMIR provides pan-European access for all authorised central counterparties (CCPs) such as LME Clear.

EMIR states that CCPs established in a 'third country' (that is, a country outside the EEA) may only provide clearing services to EU Members or EU trading venues established where that CCP first obtains recognition from the European Securities and Markets Authority (ESMA). Such recognition may only be granted where the European Commission has first issued a decision that the regulatory framework in the relevant jurisdiction is "equivalent" to that in place in the EEA.

On 19 December 2018, the European Commission issued a temporary and conditional equivalence decision in relation to the regulatory framework with which UK CCPs are required to comply. LME Clear has now submitted an application to ESMA in order to be recognised as a third country CCP. Following the granting of recognition by ESMA, LME Clear will be permitted to continue providing all of its Members with clearing services following the UK's withdrawal from the EU.

## Mandatory trading and clearing

### 4. Are EEA firms subject to any requirements concerning the types of trading venues on which they can trade metal derivatives?

No. Metal derivatives are not currently subject to the mandatory trading obligations under MiFID II. As such, there is no requirement for EEA regulated firms to trade these instruments on EEA (or equivalent) trading venues. If metal derivatives were to become subject to these

requirements, then EEA firms may no longer be permitted to trade on the LME. We are not aware of any proposals to impose such a requirement on metal derivatives.

**5. I access LME Clear as a client of a Member, am I subject to any requirements concerning the types of clearing house through which I must clear metal derivatives?**

No. Metal derivatives are not currently subject to the mandatory clearing obligations under EMIR. As such, there is no requirement for EEA regulated firms to clear these instruments through EEA (or equivalent third country) clearing houses. If metal derivatives were to become subject to these requirements, then EEA firms may no longer be permitted to clear through LME Clear. We are not aware of any proposals to impose such a requirement on metal derivatives.

## **Passporting and authorisation requirements for the LME and LME Clear**

**6. My firm is EEA regulated, can we continue to rely on our EEA passport after Brexit?**

Once the UK has withdrawn from the EU, firms regulated in the EEA which undertake regulated activities in the UK will no longer be able to rely on their MiFID II passporting rights. Instead, EEA firms will be able to register for the FCA's Temporary Permissions Regime (TPR) which enables firms to continue to operate within the scope of their existing permissions for a temporary period before submitting an application for FCA/PRA authorisation.

**7. I work at an FCA regulated, UK firm which has EEA clients, how will Brexit affect my ability to service them?**

Once the UK leaves the EU, the passporting provisions under MiFID II will no longer benefit UK authorised firms and EEA Member States may be able to impose certain restrictions on them. It is therefore possible that UK firms providing investment services to EEA-based clients could be prevented from offering their services in that jurisdiction. Accordingly, UK-based firms with EEA clients should consider how they will continue accessing these clients. There are a number of potential options available and the most appropriate solution will depend on the firm's business model, the type of investment activity being provided and the size of their EEA client base. The relevant options include:

- (i) Applying for the UK entity to have a direct licence in the relevant EEA Member State in which its clients are located;
- (ii) Establishing a new entity in the EEA and applying for a licence from the relevant regulator. This entity could then benefit from a MiFID II passport and service clients throughout the EEA;
- (iii) Consideration of the relevance of "reverse solicitation" to its services.

It is also worth noting that the designation of the LME's contracts as ETD or OTC (see question 10 below) could also be relevant to EEA clients as it could impact their regulatory capital obligations or their designation as NFC-/NFC+ for EMIR purposes.

**8. The LME Rules include certain requirements concerning how my firm is regulated. What will loss of passporting rights mean for the LME Rules?**

The LME Rules do not limit membership based on regulated status. However, they do impose some additional obligations for those firms which do not have a UK licence. Therefore an EEA-based firm which currently relies on a MiFID II passport, and which will not be authorised by the FCA or reliant on the UK's newly introduced "Temporary Permission Regime" ("TPR") following Brexit, may be required to provide the LME with a legal memorandum of advice explaining the basis on which it is able to trade on the LME without breaching the UK regulatory regime. Such a basis may include the reliance on an exemption under the UK's Regulated Activities Order, for example the exemption applicable to entities that do not have a UK presence and which undertake regulated activities "with or through" a UK regulated firm.

**9. What will loss of passporting rights mean in terms of the requirements imposed on Members by the LME Clear Rules?**

The LME Clear Rules mandate that Members maintain all regulatory authorisations in all jurisdictions for which they are required.

Additional requirements apply in relation to General Clearing Members, who are required by the LME Clear Rules to be regulated (either in the EEA or in another country deemed acceptable) and not prohibited from being a General Clearing Member by the laws and regulations that apply to them. Generally, Clearing Members must be either:

- a credit institution or investment firm as defined in EU legislation (or the equivalent in a non-EU country), or;
- permitted to carry on regulated financial services activities in the UK under the relevant UK law. This could be either because they are authorised by the UK authorities, or because an exemption applies.

Members carrying on activities in the UK from the EEA will need to review the basis on which they do this following the UK's withdrawal from the EU. Members currently relying on passporting rights will need to ensure that they are able to continue their activities in the UK (for example by registering for the TPR or by relying on an exemption) once the UK is no longer part of the EU.

## **Exchange traded derivatives and OTC contracts**

**10. Will LME contracts continue to be viewed as Exchange Traded Derivatives (ETDs) for EU counterparties?**

Currently the LME's contracts are seen as ETDs for the purpose of MiFID II and EMIR. Once the UK leaves the EU, from an EU law perspective the LME will need to be classified as an "equivalent trading venue" under EMIR and MiFIR in order for its contracts to continue to be classified in this manner.

In the event that equivalence is not determined in advance of Brexit, and there is a period where LME contracts are OTC from an EU law perspective, there are a number of additional regulatory obligations that may potentially apply both for the UK and EEA counterparty. These may include additional reporting obligations and could contribute to the mandatory clearing threshold for entities currently designated as NFC-.

From a UK law perspective, the LME's contracts will continue to be classified as ETDs.

## **Regulatory Capital**

### **11. My firm is an EEA regulated Clearing Member. How could our capital position be impacted by Brexit?**

The European Capital Requirements Regulation (CRR) imposes requirements on the level of capital that regulated firms must hold. The level of capital that a firm is required to hold depends on the level of risk exposure within its business. CRR stipulates how these risk levels should be calculated. Where firms that are subject to the CRR have exposures to a CCP, the risk weighting that it must apply to those exposures will depend upon the regulatory status of that CCP. In particular, a CCP that is authorised or recognised under EMIR is deemed to be a “qualifying CCP” (QCCP) under the CRR. The risk weighting that must be applied for exposures to a QCCP is significantly more favourable than the risk weighting for CCPs which are not QCCPs. This means that more capital must be held against exposures to a CCP that is not a QCCP.

LME Clear is currently applying to ESMA for recognition under EMIR and should this be granted then LME Clear would be classified as a QCCP and the more favourable risk weighting would continue to apply to exposures to LME Clear.

## **Further information**

### **12. Who should we contact for further information?**

For more information on Brexit, please contact [Brexit@lme.com](mailto:Brexit@lme.com).

### **13. Who should we contact for further information if we wish to change the legal entity which is a Member of LME Clear?**

If you wish to apply for new LME or LME Clear membership, or you wish to change the legal entity within your group which is a Member of LME and LME Clear, you should contact your usual relationship manager or email [LMERM@lme.com](mailto:LMERM@lme.com). Please be aware that any new Member entity must meet the eligibility criteria in order to become a Member in accordance with the LME Clear rules and procedures.