20 November 2013

Via Electronic Mail

David Bailey

Head of Department / Market Infrastructure & Policy / Markets

Financial Conduct Authority

25 The North Colonnade, Canary Wharf

London, E14 5HS

Re: Request for extension of 'no action' period concerning the arrangement and execution of forward energy commodity transactions

Dear Mr. Bailey,

In anticipation of the prospective FCA decision regarding the regulatory status of broker-operated systems in so far as they facilitate physically settled gas and power forward transactions under MiFID 1, C.6, our members request that the FCA extends the disapplication period from 16 December 2013 – date by which brokers have been requested to implement solutions to ensure clear distinctions between the MTF and non MTF services they provide – until **at least 12 February 2014**. Our members also request the possibility for market participants to continue to characterise transactions that take place on brokers' facilities according to the existing interpretations until the February 12th date.

We consider the proposed delay is justified given the extent of the changes required within our member companies to orderly implement the new workflows and functionalities and to review the Rulebooks for MTF services and Terms of Business for the non-MTF services which are yet to be provided by the brokers.

We have taken a proactive approach in helping to develop a solution for the issue of physical forwards including creating a working group with LEBA to ensure an ongoing dialogue to develop an alternative, optional workflow solution to meet the concerns raised by the FCA.

Brokers are working on a broadly common roadmap to deliver the new workflows. Although this roadmap indicates that the brokers and the Trayport Gas & Power platform expect to be ready for 16 December this does not allow for any slippage in the timetable for development delays or possible changes requested to MTF Rulebooks and/or brokers' Terms of Business, integration of the changes within member companies' own systems, risk management systems and internal record keeping systems which are essential to market risk and compliance teams.

Our member companies need to have sufficient time to implement the above mentioned changes to ensure they can fulfil their reporting and other obligations under EMIR including monitoring the Gross-Notional-Value (GNV) for any MTF trades where appropriate. Although preparatory work can and is being undertaken it will not be possible to soundly configure, test and implement changes until members have full technological specifications from Trayport, ICE and other technology providers. Trading desks will also need to be appropriately trained to ensure the changes are well understood and the impact on liquidity is minimised.

As such, a 16 December go live runs the significant risk that a large proportion of market participants will not be ready to operate with the new workflow. Consequently, some market participants will still be forced to use the existing MTF services whilst others will use the new non-MTF services which will lead to separate liquidity pools. This means market disorder because liquidity may become fragmented. Given ongoing concerns around market liquidity in some energy markets, our members believe that an orderly transition is of paramount importance, so that all firms are able to use the new non-MTF services at the same time.

Furthermore, our members will also need an opportunity to fully review any changes to MTF Rulebooks and non-MTF Terms of Business and seek necessary approvals for signing up to the new arrangements with brokers and system providers.

Overall, the tight timescales our members are working under mean that implementing the solution could put pressure on standard approval processes. This is in turn likely to increase operational and compliance risk. Further, many of our members report that they cannot implement the brokers' solution in the timescales provided without losing functionality in other systems.

The 16 December deadline is therefore severely challenging at best – particularly given the ongoing pressures of EMIR implementation including the development of new transaction reporting solutions (particularly for ETD reporting given there will now be no delays post 12 February 2014).

We believe that - subject to confirmation of acceptable timescales from Trayport, ICE and other technology providers and regulatory 'approval' of the brokers' trading systems and term of business documentation - our members can only accommodate these changes without significant risk to operational and compliance considerations if there is a delay to the go live date until at least 12 February 2014. This should apply to both the implementation of the proposed solutions by brokers and software providers and to the FCA's application of its new interpretation to trades concluded before that date.

We would therefore urge the FCA to confirm as soon possible an extension of the period needed to fully and orderly implement the new brokers' functionalities until at least 12 February 2014 so as to satisfactorily reduce the current risk of market disorder arising from the 16th December date.

Yours sincerely,

On behalf of their collective membership:

Jan van Aken

EFET Secretary General

European Federation of Energy Traders

Hans Ten Berge

Eurelectric Secretary General

ELECTRICITY FOR EUROPE

Gwyn Dolben

Energy UK Head of European Affairs

Anthony Belchambers

FOA Chief Executive Officer

ANNEX

If the 16th December deadline is maintained, the following set of activities will need to be accomplished in time for then:

1. writing the new Rulebooks/Terms of Business
2. the FCA approving the new Rulebooks/Terms of Business
3. customers reviewing and approving the new Rulebooks/Terms of Business
4. customers' Risk and Operations departments making themselves comfortable with the new solutions
5. development of the platforms to incorporate the new workflows
6. Internal transition, IT implementation and test phase

Each of the activities after the FCA approval requires sufficient time: alone for activity 3 and 4, at least 3-4 weeks (until beginning of Dec) are required in order to have a *proper* business, technical and legal review in each organization across the European trading industry.

It is difficult to specify the implementation lengths for activity 5: The brokers will most likely implement different approaches which will require also different changes on the *trading industry side*. In addition, there is currently little clarity on the changes needed at the *trading industry side*. However, even if the changes are minimal, the IT resources available and the budgets in place, each firm would usually need 4 weeks for "light" IT adjustments plus 1-2 weeks for user testing and bug-fixing.

It is uncertain if the brokers will start *before* or *after* the FCA & industry approval with IT changes – our member companies would prefer to have some sort of commitment on the specified requirements before you touch the IT and run into costs. This would imply that some brokers may hardly be able to start with all IT related changes this year – the same goes for IT changes on energy organisations' side which is not clearly specified as of today (see activity 6).

In total, it appears challenging to move from MTF to Non-MTF trading within 4 weeks remaining. Accounting for the facts a) that some IT implementation can be more exhaustive at some brokers and energy trading organizations, b) some operational risk/legal/ business changes to business processes are necessary and c) the holiday season, a more realistic a go-live for the majority of energy and broker industry seems to be rather somewhere in late Q1/2014. It does not help the liquidity if the development is not synchronized and only part of the companies use a limited amount of Non-MTF platforms.

To achieve a system change across the industry on a seamless operational and technical level without compromising market quality and risk management, we would like to highlight also the following issues:

- Given the brokers' responsibility to substantiate that a transaction was either an MTF or non-MTF, market participants need to add the nature of the platform (MTF/non-MTF service) to **the confirmation process**. Therefore traders would want to confirm this information as part of the reconciliation process used by the industry (confirmation matching between trader and broker).

- This implies embedding **the MTF/non-MTF 'flag'** as part of the trade message into the two prevalent market standards for confirmations (EFET eCM Standard – electronic Confirmation Matching for bilateral trades and EFET eXRP Standard – exchange Related Processing for exchange and cleared trades), followed by **setting up a test environment** to verify the appropriate coding and systems configurations together with brokers' participation. The required time to upgrade both eCM and eXRP standards and for market participants to implement them building on the highest IT and operational quality requirements is considerably more than 4 weeks.

- The estimated time to **update traders' transactional and ETRM systems** to imbed the MTF/non-MTF 'flag' and for system providers and/or internal IT departments to enrich their currently applied data models is also considerably more than 4 weeks.