



29 March 2012

Mr. Alberto Pototschnig
ACER
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1000 Ljubljana
Slovenia
Via email: info@acer.europa.eu

Mr. Elio Zammuto
Ofgem
9 Millbank
London SW1P 3GE
United Kingdom
Via email: Elio.Zammuto@ofgem.gov.uk

RE: GFMA comments on the Regulation on Energy Market Integrity and Transparency

Dear Mr. Pototschnig and Mr. Zammuto:

The members of the Commodities Working Group of the Global Financial Markets Association¹ (GFMA) welcome the opportunity to provide comments to the Office of Gas and Electricity Markets (Ofgem) and the Association for Co-operation of Energy Regulators (ACER) on the requirements under the Regulation on Energy Market Integrity and Transparency (REMIT) to publish inside information. Our members are keen to maintain an active dialogue with Ofgem and with ACER throughout the process of implementation of REMIT, and would therefore like to offer some constructive comments that we hope will serve as part of that ongoing dialogue.

Fulfilling the obligation under REMIT to publish inside information

Article 4 of the Regulation on Energy Market Integrity and Transparency (REMIT) requires all market participants to disclose publicly in an effective and timely manner inside information which they possess in respect of business or facilities which the market participant concerned, or its parent undertaking or related undertaking, owns or controls or for whose operational matters that market participant or undertaking is responsible, either in whole or in part. Such disclosure shall include information relevant to the capacity and use of facilities for production, storage, consumption or transmission of electricity or natural gas or related to the capacity and use of LNG facilities, including planned or unplanned unavailability of these facilities.

We understand that some market participants are intending to meet this disclosure obligation using social media websites such as Facebook and Twitter.

¹ The Global Financial Markets Association (GFMA) brings together three of the world's leading financial trade associations to address the increasingly important global regulatory agenda and to promote coordinated advocacy efforts. The Association for Financial Markets in Europe (AFME) in London and Brussels, the Asia Securities Industry & Financial Markets Association (ASIFMA) in Hong Kong and the Securities Industry and Financial Markets Association (SIFMA) in New York and Washington are, respectively, the European, Asian and North American members of GFMA.

It is not clear that disclosure through Facebook or Twitter would be sufficient to meet the obligation under Article 4 REMIT. Article 4 provides that a market participant must "disclose publicly in an effective and timely manner". In addition, the first edition of ACER's Guidance on REMIT states (at section 2.3) that inside information should be disclosed in a manner ensuring that it is capable of being disseminated to as wide a public as possible. As a result, the market participant does not simply have to disclose the information somewhere which may potentially be publicly available: they would need to ensure that the method of disclosure is effective for the disclosure to be disseminated to as wide a public as possible.

For example, if information is made available on a publicly available website, but is difficult to locate or can only be accessed by paying a subscription fee, this would appear not to be disclosing "publicly in an effective ... manner". Similarly, if information is made available on publicly available websites, but market participants would actively need to search a large number of websites regularly throughout the course of each day, this may also not constitute disclosing "publicly in an effective and timely manner".

While both Facebook and Twitter are open to any person who wishes to access them, and neither charges any fee for access, there are other restrictions on access to Facebook and Twitter. For example, many employers block access to these sites to their employees because of security concerns regarding the site (for example, the risk of using the site to make communications from the trading floor which cannot be monitored by the firm's systems) or because access to the site is inconsistent with the firm's IT policies. Even if a firm unblocks access to Facebook or Twitter, it is not possible to unblock access solely for the purposes of receiving updates on inside information disclosures from other market participants: once the site is unblocked, employees will be able to access it freely, potentially leading to breaches of firms' security policies.

We are concerned that where a firm seeks to disclose inside information only on social media sites such as Facebook or Twitter this will not enhance the level of transparency on wholesale energy markets across the European Union, and may distort the dissemination of information (as the information will be available to some market participants but not to all).

There may also be security concerns for the firm using Facebook or Twitter to disclose this information. For example:

- Facebook and Twitter have been the target of a number of hacking attempts. This may cause concerns if the site has to be temporarily shut down, or if a market participant finds that their account has been hacked.
- The character restriction on messages posted on Twitter may mean that the information being disclosed is abbreviated or otherwise amended to fit within the character limit. This could lead to dissemination of false or misleading information, in breach of Article 5 of REMIT.

In addition, if the firm is not certain that the information has been made public, it would still be prohibited from trading in possession of the information.

We note that ACER has issued guidance, in its Guidance on REMIT issued on 20 December 2011, indicating that it would consider that a firm had disclosed inside information effectively where it made the information available through a Transmission System Operator or a transparency platform of an energy exchange or, if such platforms do not yet exist, through the

firm's own website (provided that the information was disclosed in a manner ensuring that it is capable of being disseminated to as wide a public as possible, including the media).

In the interests of promoting an enhanced level of transparency across the European Union, we would welcome further guidance from ACER on this issue reiterating the need to ensure that inside information is disclosed in a manner ensuring that it is capable of being disseminated to as wide a public as possible, and indicating examples of methods of disclosing inside information which would or would not meet the requirements of Article 4 REMIT in the opinion of ACER.

Market participants in the securities markets may fulfil the equivalent disclosure requirement under the Market Abuse Directive by disclosing through a regulatory information service such as RNS in the UK (<http://www.londonstockexchange.com/products-and-services/rns/rns.htm>). Once information has been announced to RNS, RNS ensures that the information is distributed immediately to market professional terminals, databases and financial websites across the world. The UK Financial Services Authority has published a set of criteria that regulatory information services such as RNS must meet in order to be used for the purposes of this disclosure requirement and maintains a list of services that meet those criteria, and other EU financial services regulators have taken a similar approach. We would welcome guidance from ACER confirming that market participants may use the same information services to make their disclosures under REMIT as those which they currently use to make their disclosures under the Market Abuse Directive.

We also note the comment in ACER's Guidance that where a firm cannot make disclosure through a Transmission System Operator or the transparency platform of an energy exchange because such platforms do not yet exist, firms may make disclosure through their own website, provided that the information is disclosed in a manner ensuring that it is capable of being disseminated to as wide a public as possible. For the reasons set out above (including the need for market participants to search and constantly monitor a large number of websites in order to find disclosures) we are concerned that there is a risk that it may not be possible for firms to disclose "publicly in an effective and timely manner" through their own website. A possible solution to this may be for ACER to host a public disclosure page, where market participants can make their disclosures. This would create a single reference point for wholesale energy market participants (removing the need to monitor multiple different websites), and would also ensure that the information becomes available to all market participants (as they will all be able to access it).

We would welcome the opportunity to discuss this further.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Vickie Alvo". The signature is fluid and cursive, with the first name "Vickie" being larger and more prominent than the last name "Alvo".

Vickie Alvo
Executive Director
GFMA