



June 1, 2022

Via electronic mail: consultation@lme.com

The London Metal Exchange
10 Finsbury Square London
EC2A 1AJ

Re: Consultation on OTC Position Reporting for all Physically Deliverable Metals & Accountability Levels for Reportable OTC Positions

Dear Sir/Madam,

Managed Funds Association (“MFA”)¹ appreciates the opportunity to represent the views of the global alternative investment industry in this written response to the London Metal Exchange (“LME”) consultation 22/145 on OTC Position Reporting for all Physically Deliverable Metals & Accountability Levels for Reportable OTC Positions (the “Consultation”).²

MFA supports LME’s efforts to identify and address issues which may have contributed to the recent disorder which occurred on LME’s Nickel market, and in particular the independent review which the LME will be undertaking in connection with these events. However, MFA has significant reservations as to whether the measures proposed in the Consultation are appropriate. Although LME believes that market visibility was a factor in the events which arose on its Nickel markets, it would be premature for LME to proceed with its proposals prior to the fuller reviews of the UK regulators and of the LME. Those reviews are intended to consider a broader range of factors which may have contributed to the events, and which may also need addressing.

Therefore, MFA does not support LME proceeding with the proposals set out in the Consultation.

Context

MFA represents globally active hedge funds supporting a trading environment that fosters growth in efficient, fair and transparent capital markets. Many of MFA’s members are headquartered in the United States (“U.S.”) and nearly 40 percent of MFA members have offices in the United Kingdom. A significant number of MFA members trade actively in metals markets on both UK and non-UK trading venues via direct electronic access as well as on an “OTC” basis with global dealers, investment firms and systematic internalisers.

¹ Managed Funds Association (MFA) represents the global hedge fund and alternative asset management industry and its investors by advocating for regulatory, tax, and other public policies that foster efficient, transparent, and fair capital markets. MFA’s more than 150 member firms collectively manage nearly \$2.6 trillion across a diverse group of investment strategies. Member firms help pension plans, university endowments, charitable foundations, and other institutional investors to diversify their investments, manage risk, and generate attractive returns over time. MFA has a global presence and is active in Washington, London, Brussels, and Asia.

² MFA acknowledges that its response is being submitted shortly after the deadline of 27 May set by the LME. However, the two week period provided by the LME for submission of responses was not sufficient for an association of our size to adequately gather members’ views and to complete our own internal process for submitting a response.

Managed Funds Association

The Voice of the Global Alternative Investment Industry

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We would be very happy to discuss our response with you or to provide further information. Please do not hesitate to contact the undersigned at +1 (202) 730-2600.

Respectfully submitted,

/s/ Jennifer W. Han

Jennifer W. Han
Executive Vice President
Chief Counsel & Head of Global Regulatory Affairs



ANNEX

Response to Consultation Questions

Q1 Do you have any views on the Proposals?

MFA does not believe that LME should proceed with its Proposals.

In light of the pending independent review by the LME and the pending review by the Financial Conduct Authority (“FCA”) and the Bank of England of LME’s approach to managing the suspension and resumption of the market in Nickel, MFA believes that it is premature for the LME to be introducing tools to address isolated issues which have not been assessed in the context of these broader reviews.

The recent turmoil experienced on LME’s Nickel markets was, in our view, attributable to a range of factors, including the absence of adequate price restrictions at the LME. It is far from established that LME would have been in a position to mitigate the turmoil more effectively as a result of having had visibility over members’ OTC positions. We note that metals positions entered into on other venues were not visible to LME and would not be visible even if LME’s Proposals were implemented. Neither would positions between non-members be visible to LME and so LME’s visibility would still be limited. In any case, LME should ensure that it is effectively applying measures to mitigate market turmoil regardless of the visibility it has over members’ total metals positions.

We note also that the extent of reporting being proposed by the LME is not required by other venues offering metal based products. Whilst we understand that positions may be built using both on-venue and OTC products, the scope of reporting proposed would give LME oversight of participants’ activity outside of the LME’s markets, in respect of which LME has no clear regulatory obligations.

UK regulators already have extensive information available to them on both venue-traded and OTC derivatives contracts on metal underlyings, as a result of the broad, daily reporting requirements under Article 9 of EMIR. MFA would respectfully submit that it is the role of the FCA and H.M. Treasury to determine whether consolidated position reporting across the wider metals markets is necessary to ensure market integrity, and not the role of the LME who’s position monitoring obligations should be limited to its own markets.

Should LME or the UK regulators nevertheless determine as part of their reviews that additional reporting to LME is necessary for the LME to be able to meet its regulatory obligations, then LME should proceed to consult on appropriately calibrated measures, providing adequate time for stakeholders to formulate responses (being a minimum of one month).

In particular, any such future proposals should take into account the following:

- The scope, application and applicable thresholds for any reporting requirements must be clearly defined and the required data fields should be consistent with similar data required under existing regulatory reporting regimes (*i.e.* MiFID II). LME should consult on any required fields in order to ensure that they are proportionately calibrated so as to avoid imposing undue operational burdens on the market;
- The current Proposals include a requirement to disclose the ultimate beneficial owner (“UBO”) of the underlying metal. UBOs will compromise certain client confidentiality



requirements and would necessitate LME to build out additional information security measures (including secure/automated submission tools) in order to ensure the proper handling of highly sensitive information; and

- The LME should assure members that such data will not be made available outside of its internal market surveillance units without taking steps to (i) anonymise that data; and (ii) to agree upon the ownership and licensing of such data.

Q2 Do you have any comments on the proposed Regulation 24, Part 2?

For the reasons stated in response to Q1, MFA does not believe that proposed Regulation 24, Part 2 should be introduced.

Q3 The LME understands that the Proposals may have operational implications for Members. Given the current market conditions across commodity markets, the LME believes that these Proposals represent a proportionate and appropriate approach to implementation. Where Members and other interested parties accept the policy direction anticipated in this consultation Notice, do you believe that the operational processes described above represent appropriate operational means to achieving this? If you have any suggestions that you consider may assist in streamlining the Proposal processes, please provide your views.

For the reasons stated in response to Q1, MFA does not accept the policy direction anticipated in the Consultation.