

# **EU Regulation on Wholesale Market Integrity and Transparency (REMIT) Set to be Enforced in the UK**

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If the UK Government meets the implementation deadline of 28 June 2013, then the United Kingdom will be one of the first EU Member States to implement the EU regulation on wholesale market integrity and transparency (REMIT). Market participants should ensure that all compliance procedures and trading functions are kept fully up to date with the stricter market abuse regime.

On 6 June 2013, the UK Office of Gas and Electricity Markets (Ofgem) launched a consultation on the new enforcement powers that have been extended to the regulator pursuant to the EU regulation on wholesale market integrity and transparency (REMIT) (the Consultation). REMIT, which came into force in December 2011, prohibits insider trading and attempted or actual market manipulation in the wholesale energy markets.

## **Background**

Ofgem is the United Kingdom's national regulatory authority tasked under REMIT with the supervision of the United Kingdom's wholesale power and gas markets, and authorized to deal with any suspected or actual breaches of REMIT. Those entities participating in the wholesale power and gas markets must register with Ofgem, as Ofgem is required to maintain a list of all such market participants.

Pursuant to REMIT, the UK Government is required to establish a regulatory regime to penalise any market abuse activities arising from market manipulation and/or insider trading (or suspected market manipulation and/or insider trading). REMIT's aim is to increase transparency in the market, as well as to improve market liquidity. The penalties that are brought into force under REMIT must be effective, dissuasive and proportionate, reflecting the nature, duration and seriousness of the infringements, as well as the damage caused to consumers, in order to meet the aims prescribed by the legislation.

## **The Consultation**

The purpose of the Consultation is to seek the views of market participants on Ofgem's proposed view on enforcement, as well as on the proposed regulatory regime that the UK Government has put forward in Parliament.

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In the Consultation, Ofgem has stated that it does not, as yet, intend to set fiscal amounts on any penalties that it may impose. Rather, Ofgem intends to consider this issue as part of its ongoing review of its enforcement powers.

Market participants are specifically asked to comment on, *inter alia*, (i) whether or not the factors that Ofgem will consider when deciding to impose a penalty are appropriate, (ii) the factors that Ofgem will take into account when deciding on the amount of the penalty that it will impose, and (iii) what factors should be taken into account when deciding whether or not to launch an investigation under REMIT.

Although Ofgem's enforcement powers are expected to come into force by the end of June 2013 (in order to meet the deadline of 28 June 2013, which has been set by the European Commission, by which time all EU Member States are required to enforce REMIT), market participants have until 29 August 2013 to respond to the Consultation. The procedural guidelines regarding enforcement are expected to be finalised by October 2013.

## **Oil and Gas Market Manipulation**

The delineation of Ofgem's enforcement powers comes in the wake of the dawn raids that took place at the offices of several oil majors in May 2013. Similarly, in late 2012, Ofgem and the Financial Conduct Authority (known as the Financial Services Authority at the time) commenced an investigation into suspected market manipulation in the gas markets involving, in particular, activities that took place around the close of the daily trading window.

At the time the gas market probe commenced, there were suggestions that REMIT's enforcement in the United Kingdom would start sooner than the 28 June 2013 deadline; however, this did not take place. The UK Government was, at the time of the gas market probe, criticised by the shadow energy secretary, Caroline Flint, for being slow to implement REMIT.

The UK Government is now, therefore, keen to ensure that Ofgem is afforded broad powers of enforcement, including the right to inspect premises, the ability to seize data and the right to levy high financial penalties, thus matching the European Commission's enforcement abilities. UK Energy Secretary Ed Davey has said that the broad enforcement powers will give Ofgem the "weapons" to fight against unlawful activity in the energy market.

## **Pricing Benchmarks**

On the same day that it published the Consultation, Ofgem also launched an investigation into pricing benchmarks in the gas and electricity markets. The review of the pricing benchmarks is part of the institutional move to review the reliability of benchmark pricing in light of both of the gas and oil market scandals, as well as the International Organization of Securities Commissions' investigation into oil price reporting agencies (PRAs).

REMIT recognises the importance of information flows to PRAs. One of the manipulative practices that REMIT seeks to prevent is that of deliberately providing false information to undertakings that provide price assessments or market reports, where the effect would be to mislead market participants acting on the basis of the information. Ofgem currently does not have the power to regulate PRAs or other providers of benchmark prices.

The investigation calls on market participants to provide Ofgem with information regarding internal

reporting lines, including, *inter alia*, (i) how information is provided to PRAs by market participants, (ii) how many PRAs each market participant uses and (iii) how market participants use the benchmark provided by PRAs. Those wishing to participate in the investigation are required to submit information by 31 July 2013.

## Next Steps

If the Government meets the implementation deadline of 28 June 2013, then the United Kingdom will be one of the first EU Member States to implement REMIT.

Market participants should ensure that all compliance procedures and trading functions are kept fully up to date with the stricter market abuse regime. Traders should receive the appropriate training, setting out how REMIT will affect their day-to-day activities and what obligations will now be imposed on them.

Reporting procedures should be in place, setting out how market participants will report the necessary details of trades undertaken to the relevant regulator. Finally, all market participants operating in the power and gas markets should register with Ofgem and should inform Ofgem in the event of any changes in their daily activities.

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