IMPORTED GOOD DELIVERY PLATINUM AND PALLADIUM PLATES AND INGOTS IN RELATION TO REACH

This document has been produced by the London Bullion Market Association (LBMA) and the London Platinum and Palladium Market (LPPM), representing the wholesale precious metals market.

The purpose of this document is to describe the argument of the LBMA and the LPPM that Good Delivery platinum and palladium plates and ingots ***imported into the EEA for investment purposes*** *are articles not containing substances with intended release, therefore ought to be excluded from registration obligations involving the submission of information dossiers under REACH.*

1. INTRODUCTION

The REACH Regulation ensures a high level of protection of human health and the environment. The Regulation also aims to ensure the free circulation of substances on the internal market while enhancing competitiveness and innovation[1]. The provisions deal with substances, used on their own, in mixtures or in articles; such substances fall into the scope of REACH in three processes: manufacturing, placing on the market, and use[2].

This paper will explore the provisions of REACH in relation to their effect on importers of Good Delivery platinum and palladium plates and ingots when used as a physical asset **for investment purposes**, and held in a vault provided by financial institutions. To qualify as a Good Delivery platinum and palladium plate or ingot under the LPPM's Good Delivery standards, the plate or ingot must meet the prescribed criteria set out in *Table 1*. Without the Good Delivery status, the plate or ingot cannot be accepted into the London vaults.

While we understand that the Health and Safety Executive (HSE) cannot endorse or reject the arguments set out in this paper, an observation on the position outlined below of importers potentially subject to REACH requirements would be highly appreciated.

2. BACKGROUND

In March 2010, the LBMA and the Precious Metals Consortium sent a position paper to the HSE lobbying for Good Delivery gold bars imported into the EEA to be recognised as articles containing no substances with intended release. The paper provided that importers of Good Delivery gold bars should be exempt from registration obligations under REACH. The paper also highlighted that importers ought to exclude Good Delivery gold bars when calculating imported tonnage quantities, which determine the level of compliance measures to be undertaken by the importer.

The response from Dr. Gary Dougherty at the HSE's REACH Helpdesk was received positively. Dr. Dougherty commented that the need for specific markings "appear to make a good case for [Good Delivery gold bars] being articles". This argument was strengthened by the "need for a flaw-free finish" and "surface finishing aspects". Dr. Dougherty further suggested that, were importers to proceed on the basis that Good Delivery gold bars are to be classed as articles not containing substances intended for release, it would be important to consider by whom this should be challenged. If relevant sectors across the EEA collectively treated Good Delivery gold bars as articles, such a position would be unlikely to be tested.

Following this response, the industry took the view that it was acceptable for Good Delivery gold bars to be

[1] Article 1(1), REACH
[2] Article 1(2), REACH

excluded from registration obligations. Please note that Good Delivery platinum and palladium plates and ingots are the platinum and palladium equivalent to Good Delivery gold bars as a physical asset.

3. OUR POSITION

In this paper, we will set out our arguments as to why Good Delivery platinum and palladium plates and ingots should be excluded from registration under REACH. This will firstly involve demonstrating that a Good Delivery platinum and palladium plate or ingot is an article, rather than a substance. This is because its shape, surface and design, rather than its chemical composition, gives the plate or ingot its function. Secondly, we will set out that importers of Good Delivery platinum and palladium plates and ingots ought to be excluded from registering the substances contained within the Good Delivery platinum and palladium plates and ingots. This is because the articles do not contain substances intended for release, therefore cannot fulfil the relevant conditions.

4. DETERMINATION OF SUBSTANCE OR ARTICLE

Under REACH, a **substance** is a chemical element and its compounds in the natural state or obtained by any manufacturing process, including any additive necessary to preserve its stability and any impurity deriving from the process used, but excluding any solvent which may be separated without affecting the stability of the substance or changing its composition[3].

An **article** is an object which during production is given a special *shape, surface or design* which determines its *function* to a greater degree than its chemical composition[4].

The European Chemicals Agency Guidance on Requirements for Substances in Articles[5] (the Guidance) provides some clarification on the terms italicised in the above definition of an article, explored below:

i. Shape, surface or design

The Guidance advises that the shape, surface or design of an object represents its physical form rather than its chemical composition. *Shape* means the three-dimensional form of an object, like depth, width and height. *Surface* means the outermost layer of an object. *Design* means the arrangement or combination of the "elements of design" in such a way as to best accomplish a particular purpose of the object.

Taking the Guidance into consideration, the shape, surface and design of a Good Delivery platinum and palladium plate or ingot represent its form more so than its chemical composition. While platinum and palladium materials used as feedstock for industrial purposes are represented by their chemical composition (and therefore are classed as a substance under REACH), Good Delivery platinum and palladium plates and ingots are represented by their shape, surface and design.

To be accepted as a Good Delivery platinum and palladium plate or ingot into the London vaults, it must comply with a list of rules which have been adopted in all major platinum and palladium trading centres. These rules are set out in the LPPM London Good Delivery List (the List). The plate or ingot must conform to the following specifications:

[3] Article 3(1), REACH
[4] Article 3(3), REACH
[5] Version 4.0, June 2017

Table 1

	Platinum	Palladium
Form	Plate or Ingot	Plate or Ingot
Weight	The maximum weight permitted is 6 kilograms (192.904 troy ounces). The minimum weight permitted is 1 kilogram (32.151 troy ounces).	The maximum weight permitted is 6 kilograms (192.904 troy ounces). The minimum weight permitted is 1 kilogram (32.151 troy ounces).
Purity	At least 99.95% Platinum	At least 99.95% Palladium
Markings	Each plate or ingot must bear: • The producer's recognised mark; • The letters PT or PLATINUM with a stamp indicating the purity; • An individual number or mark; • Year of manufacture; and • The weight in grams, kilograms or troy ounces (if in grams to one decimal place, if in kilograms to four decimal places and if in troy ounces to three decimal places).	Each plate or ingot must bear: • The producer's recognised mark; • The letters PD or PALLADIUM with a stamp indicating the purity; • An individual number or mark; • Year of manufacture; and • The weight in grams, kilograms or troy ounces (if in grams to one decimal place, if in kilograms to four decimal places, or if in troy ounces to three decimal places).
Appearance	Smooth, free from cavities and easy to handle.	Smooth, free from cavities and easy to handle.

Table 1 sets out how the shape, surface and design of a Good Delivery platinum and palladium plate or ingot is more representative of its physical form, rather than its chemical composition.

The high-purity threshold indicates all Good Delivery platinum and palladium plates and ingots are required to have pure 99.95% platinum or palladium per thousand. If this were the only criteria to meet the Good Delivery standards, the plates and ingots would likely be classed as substances, rather than articles, as their chemical composition would represent their physical form. However, the other Good Delivery standards include a weight range, specific markings and a smooth appearance. These variable and identifiable features in turn make the Good Delivery platinum and palladium plate or ingot unique.

The Good Delivery platinum and palladium plate or ingot derives its value from these features, as no two plates or ingots in circulation share the same combination of weight, markings and appearance. The individual number or marking required to be stamped on a plate or ingot, in order for it to meet the Good Delivery platinum and palladium standards prescribed by the List, becomes its distinguishing feature. This therefore represents its value more so than its chemical composition. If, for example, two Good Delivery platinum and palladium plates were found to be using the same individual number or marking, both plates would be embargoed under the assumption one is legitimate whilst one is an imitation. The plate found to be an imitation would not be permitted to have Good Delivery status, and would therefore lose its value for an importer. This demonstrates that while the imitation plate may even be of a higher purity, the individual number or marking is what defines the value of a Good Delivery platinum and palladium plate and therefore its value as a physical asset.

The LPPM Good Delivery Rules (the Rules) provide further specifications on the markings and appearance required to meet Good Delivery standards. The marks on the Good Delivery platinum and palladium plates and ingots must be clear and may be applied using conventional stamping or by dot matrix (pneumatic punching), provided always that if pneumatic punching is used the marks must be no less clear and at least as durable as if conventional stamping had been used. Irregularities in appearance such as surface cavities,

holes and blisters must be avoided; the importer reserves the right to refuse to accept the plate or ingot if it does not meet the Good Delivery standards. The insistence of importers that Good Delivery platinum and palladium plates and ingots be of a good physical appearance and follow the highest standard is a reflection of the long-term investment nature of these plates and ingots.

To further emphasise how the Good Delivery platinum and palladium plate or ingot's shape, surface and design represents its physical form, the Rules specify how platinum or palladium plates and ingots should be treated when they are not for use as a physical asset to be held by investors. The Rules state that if the plate or ingot's intended use is as a raw material, they must be stamped accordingly to demonstrate that they are non-Good Delivery.

Finally, the Guidance notes that the special shape, surface and design must be given to the object *during production*. This implies that, due the deliberate determination of the Good Delivery platinum and palladium plate or ingot shape, surface and design during a production step by a Good Delivery refiner, it ought to be regarded as an article.

ii. Function

The Guidance advises that the term *function* is to mean the intended purpose for which an object is to be used. The intended purpose of a Good Delivery platinum and palladium plate or ingot is to be used as a physical asset which financial institutions can hold in a vault. The Good Delivery platinum and palladium plate or ingot's shape, surface and design determines this function because, without its identifiable markings and smooth appearance, it loses its utility and value as a physical asset. Without the Good Delivery status, the plate or ingot cannot be accepted into the London vaults.

Whilst mandatory that the Good Delivery platinum and palladium plate or ingot is of 99.95% purity, the inherent chemical properties of platinum and palladium are not what determines the value of the bar. Instead, the value derives from the bar's shape, size and function as outlined above. If, for example, the appearance of the plate or ingot contained a cavity, it would not be acceptable as a Good Delivery plate or ingot and therefore eliminates its intended use as a physical asset.

The Guidance recommends looking at the result of using an object and paying less attention to the quality of result. For example, a Good Delivery platinum and palladium plate or ingot's function as a physical asset is not affected if its purity is 99.95% or 99.99%; both would be a Good Delivery platinum and palladium plate or ingot. Instead, meeting the Good Delivery standards of weight range, markings and appearance set out in *Table 1* determine that the plate or ingot fulfils its intended purpose as a physical asset. This demonstrates that even if the Good Delivery platinum and palladium plate or ingot improves in its technical sophistication, its function as a physical asset will not change as it will remain a Good Delivery platinum and palladium plate or ingot.

As a Good Delivery platinum and palladium plate or ingot's intended purpose is to be used as a physical asset which investors can hold in a vault, its special shape, surface and design determines this to a greater degree than its chemical composition. This therefore suggests that a Good Delivery platinum and palladium plate or ingot ought to be regarded as an article.

iii. Conclusion

As suggested, platinum and palladium ought to be regarded as a substance when the Good Delivery standards are not met, for example when used as feedstock for industrial use. This is because its function is determined more so by its chemical composition rather than its shape, surface or design. Conversely,

Good Delivery platinum and palladium plates and ingots ought to be regarded as an article. Their unique and identifiable markings and appearance, which qualify them as Good Delivery platinum and palladium plates and ingots, determine their function as a physical asset more so than their chemical composition. The importer, to which REACH would be potentially applicable, places the value of Good Delivery platinum and palladium plates and ingots in their purpose as a physical asset, which in turn is determined by their surface, shape and design.

On the basis of the points outlined in this section, we conclude that Good Delivery platinum and palladium plates and ingots ought to be regarded as an article.

5. OBLIGATION TO REGISTER

Importers of articles are required to register substances contained in those articles if two conditions are met[6]:

a) The substance is present in articles in quantities totalling over one tonne per year; and
b) The substance is intended to be released under normal or reasonably foreseeable conditions of use.

Referring first to condition (b), the Guidance states that if the object contains a substance or mixture that can be physically separated, it is "intended to be released under normal and reasonably foreseeable conditions of use". Examples of this include pouring and wringing out the substance from the article. Referring to condition (a), the Guidance states that where total tonnage of all articles containing substances with intended release is equal to or below one tonne, registration of these substances will not be required.

On the basis that a Good Delivery platinum and palladium plate or ingot may be regarded as an article, such an article cannot fulfil either condition. Due to the shape, surface and design of the Good Delivery platinum and palladium plates and ingots, as well as their function, no substance is intended to be physically separated from the bar. This means the quantity threshold cannot be met. This therefore suggests that Good Delivery platinum and palladium plates and ingots do not fulfil the criteria for the obligation for importers to register substances in articles.

6. CONCLUSION

On the basis of the points proposed, we conclude that Good Delivery platinum and palladium plates and ingots ought to be regarded as articles under the REACH Regulation. As these articles do not fulfil the conditions for the obligation to register, importers of Good Delivery platinum and palladium plates and ingots ought to be excluded from registration requirements under the REACH Regulation.

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[6] Article 7.1, REACH