



IMPORTED LBMA GOOD DELIVERY SILVER BARS IN RELATION TO REACH

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

*The purpose of this document is to describe the argument of the LBMA that Good Delivery Silver Bars **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 innovation¹. 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 use².

This paper will explore the provisions of REACH in relation to their effect on importers of Good Delivery LBMA Silver Bars when used as a physical asset **for investment purposes**, and held in a vault provided by financial institutions. To qualify as a Good Delivery Silver Bar under the LBMA's Good Delivery standards, the Bar must meet the prescribed criteria set out in *Table 1*. Without the Good Delivery status, the Bar 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 for investment purposes to be recognised as articles containing no substances with intended release. In March 2018, the LBMA and the London Platinum and Palladium Market sent a second paper lobbying for Good Delivery Platinum and Palladium Plates and Ingots imported into the EEA for investment purposes to be recognised as articles containing no substances with intended release. The papers provided that importers of Good Delivery Gold Bars and Platinum and Palladium Plates and Ingots should be exempt from registration obligations under REACH. The paper also highlighted that importers ought to exclude Good Delivery Gold Bars and Platinum and Palladium Plates and Ingots when calculating imported tonnage quantities.

Both responses from Dr. Gary Dougherty at the HSE's REACH Helpdesk were received positively. Dr. Dougherty consistently commented that the need for specific markings appear to make a "good case for [Good Delivery Gold Bars/Platinum and Palladium Plates and Ingots] being articles". This argument was strengthened by the "need for a unique identifier" and "surface finishing aspects". Dr. Dougherty further suggested that, were importers to proceed on the basis that Good Delivery Gold Bars and Platinum and Palladium Plates and Ingots 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 and Platinum and Palladium Plates and Ingots as articles,

¹ Article 1(1), REACH

² Article 1(2), REACH



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 and Platinum and Palladium Plates and Ingots to be excluded from registration obligations. Please note that Good Delivery LBMA Silver Bars are the Silver equivalent to Good Delivery Gold Bars Platinum and Palladium Plates and Ingots as a physical asset.

3. OUR POSITION

In this paper, we will set out our arguments as to why Good Delivery LBMA Silver Bars should be excluded from registration under REACH. This will firstly involve demonstrating that a Good Delivery Silver Bar is an article, rather than a substance. This is because its shape, surface and design, rather than its chemical composition, gives the Bar its function. Secondly, we will set out that importers of Good Delivery LBMA Silver Bars ought to be excluded from registering the substances contained within the Good Delivery LBMA Silver Bars. 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 composition³.

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 composition⁴.

The European Chemicals Agency Guidance on Requirements for Substances in Articles⁵ (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 Silver Bar represent its form more so than its chemical composition. While Silver materials used as feedstock for industrial purposes are represented by their chemical composition (and therefore are classed as a substance under REACH), Good Delivery LBMA Silver Bars are represented by their shape, surface and design.

To be accepted as a Good Delivery Silver Bar into the London vaults, it must comply with a list of rules which have been adopted in all major Silver trading centres. These rules are set out in the [LBMA's Good](#)

³ Article 3(1), REACH

⁴ Article 3(3), REACH

⁵ Version 4.0, June 2017



[Delivery Rules for Gold and Silver Bars](#) (the Rules). The Bar must conform to the following specifications:

Table 1

	LBMA Good Delivery Silver Bar
Form	Bar
Weight	The minimum gross weight permitted is 750 troy ounces (approximately 23 kilograms), and the maximum gross weight permitted is 1100 troy ounces (approximately 34 kilograms). However, the Rules recommend that refiners should aim to produce bars within the following weight range; <ul style="list-style-type: none"> • minimum gross weight: 900 troy ounces (approximately 28 kilograms) • maximum gross weight: 1050 troy ounces (approximately 33 kilograms)
Dimensions	The permitted dimensional ranges are as follows: <i>Length (Top):</i> 300 mm +/- 50 mm <i>Undercut*:</i> 5° to 15° <i>Width (Top):</i> 130mm +/- 20 mm <i>Undercut*:</i> 5° to 15° <i>Height:</i> 80 mm +/- 20 mm * The undercut refers to the degree of slope on the side and ends of the bar and is calculated using the following formulae: $90 \text{ degrees(ATAN(H/((T-B)* 0.5)))}$, where H=Height, T= Top, and B=Bottom dimensions of the bar, the bottom dimension being measured to the theoretical sharp edges. It is important that the edges of the bars must not be sharp, so as to avoid the risk of injury during handling.
Purity	The minimum acceptable fineness is 999.0 parts per thousand silver.
Markings	Each Bar must bear: <ul style="list-style-type: none"> • The stamp of the refiner • The assay mark • The fineness • The serial number (which must not comprise of more than 11 digits or characters) • The year of manufacture as a four digit number Marks should be clear and the height of characters used should be a minimum of 12mm.
Appearance	Smooth, free from cavities and easy to handle.
Technical Drawings	Please see the Sample Technical Drawing for a Good Delivery Silver Bar at Annex J of the Rules .
End Stamping	Please see the Sample of End Stamping of Good Delivery Silver Bars at Annex K of the Rules .

Table 1 sets out how the shape, surface and design of a Good Delivery Silver Bar is more representative of its physical form, rather than its chemical composition.

The high-purity threshold indicates all Good Delivery LBMA Silver Bars are required to have pure 99.90% Silver per thousand. If this were the only criteria to meet the Good Delivery standards, the Bars 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 Silver Bar unique.

The Good Delivery Silver Bar derives its value from these features, as no two Bars in circulation share the same combination of weight, markings and appearance. The individual number or marking required to be stamped on a Bar, in order for it to meet the Good Delivery Silver standards prescribed by the Rules,



becomes its distinguishing feature. This therefore represents its value more so than its chemical composition. If, for example, two Good Delivery Silver Bars were found to be using the same individual number or marking, both Bars would be embargoed under the assumption one is legitimate whilst one is an imitation. The Bar 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 Bar may even be of a higher purity, the individual number or marking is what defines the value of a Good Delivery Silver Bar and therefore its value as a physical asset.

The Rules provide further specifications on the markings and appearance required to meet Good Delivery standards. The marks on the Good Delivery LBMA Silver Bars 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, cracks, holes and blisters must be avoided, along with excessive shrinkage (i.e. the concavity of the top face of the bar and any concentric cooling rings must not be such that it makes it difficult to either apply or read the bar marks or in the case of concavity bars become unstable when stacked on top of each other).

The importer reserves the absolute right to refuse to accept the Bar if it does not meet the Good Delivery standards. The insistence of importers that Good Delivery LBMA Silver Bars be of a good physical appearance and follow the highest standard is a reflection of the long-term investment nature of these Bars.

To further emphasise how the Good Delivery Silver Bar's shape, surface and design represents its physical form, the Rules specify how Silver Bars should be treated when they are not for use as a physical asset to be held by investors. The Rules state that if the Bar's intended use is as a raw material for an industrial customer, they must be stamped "NGD" 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 Silver Bar 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 Silver Bar is to be used as a physical asset which financial institutions can hold in a vault. The Good Delivery Silver Bar'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 Bar cannot be accepted into the London vaults.

Whilst mandatory that the Good Delivery Silver Bar is of 99.90% purity, the inherent chemical properties of Silver 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 Bar contained a cavity, it would not be acceptable as a Good Delivery Bar 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 Silver Bar's function as a physical asset is not affected if its purity is 99.90% or 99.99%; both would be a Good Delivery Silver Bar. Instead, meeting the Good Delivery standards of weight range, markings and appearance set out in *Table 1* determine that the Bar fulfils its



intended purpose as a physical asset. This demonstrates that even if the Good Delivery Silver Bar improves in its technical sophistication, its function as a physical asset will not change as it will remain a Good Delivery Silver Bar.

As a Good Delivery Silver Bar'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 Silver Bar ought to be regarded as an article.

iii. Conclusion

As suggested, Silver 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 LBMA Silver Bars ought to be regarded as an article. Their unique and identifiable markings and appearance, which qualify them as Good Delivery LBMA Silver Bars, 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 LBMA Silver Bars 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 LBMA Silver Bars 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 met⁶:

- 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 Silver Bar may be regarded as an article, such an article cannot fulfil either condition. Due to the shape, surface and design of the Good Delivery LBMA Silver Bars, 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 LBMA Silver Bars 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 LBMA Silver Bars 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 LBMA Silver Bars ought to be excluded from registration requirements under the REACH Regulation.

⁶ Article 7.1, REACH



A handwritten signature in blue ink that reads "Ruth Crowell".

Ruth Crowell
Chief Executive
London Bullion Market Association

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