

ESMA CONSULTATION PAPER TECHNICAL STANDARDS FOR COMMODITY DERIVATIVES

AMAFI contribution

Association française des marchés financiers (AMAFI) is the trade organisation working at national, European and international levels to represent financial market participants in France. It acts on behalf of credit institutions, investment firms and trading and post-trade infrastructures, regardless of where they operate or where their clients or counterparties are located. AMAFI's members operate for their own account or for clients in different segments, particularly organised and over-the-counter markets for equities, fixed-income products and derivatives, including commodities.

AMAFI welcomes the opportunity to respond to this consultation paper (hereafter the CP) on algorithmic trading.

Before answering the specific questions raised in the CP, AMAFI would like to highlight the following general comments.

GENERAL COMMENTS

AMAFI welcomes ESMA's consultation paper on the technical standards for commodity derivatives. Overall, we believe that the proposals contained in draft RTS 21a are in adequation with the MiFID II Quick Fix objectives and provide an awaited simplification of the position limits regime for commodity derivatives and a better framework for the development of new and less liquid contracts. AMAFI welcomes the amendments to ITS 4 as well. However, AMAFI is more perplexed by the proposals contained in the draft RTS on position management controls. We believe that the introduction of requirements to include the monitoring of positions held by persons with close links in each commodity derivative add an unnecessary burden to trading venues and does not mirror the position limits regime as envisioned by ESMA. Furthermore, we believe that the introduction of accountability levels for physically settled commodity derivatives without a prior assessment of those risks and with no visibility on the efforts that will be required of trading venues and firms to implement these measures creates regulatory uncertainty when one of the main purposes of the MiFID II Quick Fix was the simplification of the regulatory framework governing commodity derivatives markets in the EU.

ANSWERS

Q1: Do you agree with ESMA's proposal regarding the impact of the new hedging exemption on the aggregation of positions? If not, please elaborate.

AMAFI agrees with ESMA's proposal.

Q2: Do you agree with ESMA's proposal for positions qualifying as risk-reducing? If not, please elaborate and provide an alternative proposal.

AMAFI agrees with ESMA's proposal.

Q3: Do you agree with ESMA's proposal on the application procedure for financial entities?? If not, please elaborate and provide an alternative proposal.

AMAFI agrees with ESMA's proposal.

Q4: Do you agree with ESMA's proposal on the application procedure for mandatory liquidity provision exemption? If not, please elaborate and provide an alternative proposal.

AMAFI agrees with ESMA's proposal.

Q5: Do you agree with ESMA's proposal on qualifying positions? If not, please elaborate and provide an alternative proposal.

AMAFI agrees with ESMA's proposal.

Q6: Do you agree with ESMA's proposed definition of financial entities? If not, please elaborate.

AMAFI agrees with ESMA's proposal.

Q7: Do you agree with ESMA's proposal regarding the aggregation and netting of positions in a commodity derivative? If not, please elaborate and provide an alternative proposal.

AMAFI agrees with ESMA's proposal.

Q8: Do you agree with ESMA's proposal for significant volumes? If not, please elaborate.

AMAFI agrees with ESMA's proposal.

Q9: Do you agree with ESMA's proposal? If not, please elaborate and provide an alternative proposal where available.

AMAFI agrees with ESMA's proposal. However, we believe that the expression "Where the deliverable supply is substantially higher than the total open interest" can lead to different interpretations by each NCA, and thus lead to sub-optimal calculations for firms operating in certain jurisdictions. AMAFI is of the view that ESMA should define more precise scales or ranges where an NCA can consider than the deliverable supply is "significantly higher" than the total open interest.

Q10: Do you agree with ESMA's proposal? If not, please elaborate.

AMAFI agrees with most

Q11: Do you agree with ESMA's proposals regarding Article 14 of RTS 21a? If not, please elaborate and provide alternative proposals.

AMAFI agrees with most of ESMA's proposals. However, we believe that the second paragraph of article 14 makes a radical assumption regarding new commodity derivatives replacing an existing one. We believe that the paragraph should specify the conditions under which the NCA is able to take into consideration the open interest in the commodity derivative on the former trading venue or in the commodity derivative to be gradually replaced. It is possible that the changes that occurred in the characteristics of the derivative do not justify taking the previous contract as a reference for capturing the potential trading interests in that contract. AMAFI wants to ensure that if an NCA decides to base the calculation on the level of open interest of previous derivative, it would always be in the best interest of the development of trading in that contract, and wonders if the approach set for new and less liquid contracts is not sufficient.

Q12: Do you see merit in the new approach considered by ESMA for new and less liquid agricultural commodity derivatives? If not, please elaborate and provide an alternative proposal.

AMAFI agrees with ESMA's proposal.

Q13: Do you agree with ESMA's proposal regarding Article 19 of RTS 21a? If not, please elaborate.

AMAFI agrees with ESMA's proposal.

Q14: Do you agree with ESMA's proposal regarding the upward adjustment factor to be used in case of a small number of market participants or less than three investment 49 firms acting as market makers? If not, please elaborate and provide an alternative proposal. Part II

AMAFI agrees with ESMA's proposal.

Q15: Do you agree with ESMA's proposed amendments to ITS 4? If not, please elaborate. Part III

AMAFI agrees with ESMA's proposal.

Q16: Do you agree with ESMA's suggestion to introduce such ongoing position monitoring requirement in the draft RTS? If not, please elaborate.

AMAFI disagrees with ESMA's suggestion to introduce a specification about the ongoing monitoring of positions held by persons with close links as a part of the position management controls implemented by trading venues. In particular, we do not see such a measure as mirroring the position limit regime as amended in draft RTS 21a. The concept of persons with close links is not used to aggregate position limits, we therefore see no use in requiring trading venues to include it in their monitoring. Furthermore, ESMA did not identify the potential risks related to the specific management of positions of persons with close links before introducing such a measure.

Q17: Do you agree with ESMA's suggestion to introduce accountability levels as part of position management controls? Do you agree with ESMA's assessment that accountability levels would be of particular relevance for physically settled commodity derivatives? If not, please elaborate and provide alternative proposals.

Although AMAFI understands the mechanism described in ESMA's description of the specific risks associated with physically settled commodity derivatives, we are not aware of an actual risk assessment backing this concern.

Furthermore, AMAFI takes issue with the wording used in article 2(1) of the draft RTS on position management controls "*at least for the physically settled commodity derivatives made available for trading*", which leaves the possibility for ESMA later to include additional types of instruments.

Finally, AMAFI is concerned that the entry into force of the provisions requiring accountability levels without a prior specification of the methodology that should be applied by trading venues. Such an approach introduces regulatory uncertainty for trading venues and firms alike, who need to assess the additional regulatory burden they will have to support when this requirement goes into force.

Q18: In your view, how should accountability levels be set for the spot month and the other months? Based on which methodology or criteria? Should all types of positions count towards the accountability levels?

AMAFI has no further input regarding the specific methodology of settings related to accountability levels.

Q19: Do you agree with ESMA's suggestion to introduce requirements for the review of accountability levels? Do you also agree with ESMA's proposal regarding reporting requirements to the NCA on accountability levels? If not, please elaborate.

In line with the answer to question 17, the relevance of provisions requiring trading venues to annually review and report to the NCA their methodology and results regarding accountability levels will depend on the additional regulatory burden that such provisions will inflict on trading venues. At first sight, AMAFI is not in favour of such measures.

Q20: In your view, what other types of position management controls could be further specified in the draft RTS?

AMAFI believes that there is no need for further types of position management controls.

