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MIFIR RTS ON COMMODITY DERIVATIVES

ESMA'S CONSULTATION

AMAFI's answer

AMAFI is the trade association representing financial markets' participants of the sell-side industry located in France. It has a wide and diverse membership of more than 170 global and local institutions notably investment firms, credit institutions, broker-dealers, exchanges and private banks. They operate in all market segments, such as equities, bonds and derivatives including commodities derivatives. AMAFI represents and supports its members at national, European and international levels, from the drafting of the legislation to its implementation. Through our work, we seek to promote a regulatory framework that enables the development of sound, efficient and competitive capital markets for the benefit of investors, businesses and the economy in general.

As part of the review of MiFIR, which was published in the OJEU on 8 March 2024, provisions regarding commodity derivatives have been amended. In particular, position management controls are extended to trading venues which trade derivatives on emission allowances, and position reporting now excludes emission allowances while introducing a new obligation to report two weekly positions reports, one of which excluding options. These changes require the revision of Commission Delegated Regulation (EU) (RTS on position management controls thereafter), Commission Implementing Regulation (EU) 2017/10934 (ITS 4 thereafter) as well as the article on position reporting in Commission Delegated Regulation (EU) 2017/565 (CDR 2017/565 thereafter). ESMA is consulting on the corresponding changes it proposes.

AMAFI would like to thank ESMA for this consultation and provides hereafter its answers.

Q.1: Do you agree with ESMA’s proposal to extend the requirements to set, review and report accountability levels to trading venues trading derivatives on emission allowances? Do you have any other comments on ESMA’s proposed amendments? Please elaborate.

AMAFI acknowledges ESMA's proposal to extend accountability level requirements to trading venues for derivatives on emission allowances.

However, given that liquidity is primarily concentrated in the spot or daily futures markets and that positions are relatively small, we believe that extending these requirements may not offer significant additional value while it would increase the administrative burden. Furthermore, relevant information is already accessible through registries, which may already fulfill the transparency objectives of these requirements.

As a general remark, AMAFI would like to reaffirm its support for the conclusions of ESMA’s 2020 report on the MiFID II Review concerning position limits and position management. The resulting MiFID “quick fix” has significantly enhanced the efficiency and flexibility of commodity derivative markets. We believe the current framework is working effectively, and we do not see the need for further significant changes beyond those proposed in this ESMA consultation paper.

Q.4: Do you foresee any challenges with the use of JSON format comparing to XML? Please provide estimates of the costs and benefits (short- and long term) related to potential transition to JSON?

On principle, AMAFI is not opposed to the JSON format . However, adopting it would involve an additional project with budget implications, which priority should be ascertained.

We understand that JSON is more modern than XML and significantly more efficient in terms of disk space. It allows for faster processing, smaller file sizes, and quicker access to information. Nonetheless, it is crucial to ensure alignment of reporting format between the various EU regulations requiring reporting.

The difficulties we foresee in using the JSON format are related to cost and project scope, as well as the potential misalignment between the different formats required by various regulations. This change of format would need to be effective also at the level of National Competent authorities. Also, it would need to be ascertained whether JSON is the best format for all reporting needs.

Additionally, we question whether now is the optimal time for such a change, considering the number of IT developments in progress (EMIR Refit reporting, CSDR, T+1).

Q.5: Do you agree with the other proposals to change ITS 4? Please use the reference number in the table above to provide comments on a specific proposal. In relation to the proposed change 5, are there other units of underlying to be added to the existing list including for reporting the information on emission allowances? In relation to the proposed change 7, are there other position types that should be added to provide more granular reporting, beyond the existing (futures, options and other)? In relation to the proposed change 8, do you foresee any scenarios in which the possibility to use the National ID should be retained?

- **For Change 5:** We agree with ESMA's proposal to specify, regarding the "notation of the position quantity" that positions in derivatives on electricity and natural gas should be expressed in units of underlying and that positions in other derivatives should be expressed in lots. However, there seems to be a discrepancy between the explanation on page 16 and article 83, where the maximum threshold in point (b) only mentions lots. We suggest clarifying this dans recommend that thresholds in point (b) also be expessed in MWh, MBTU, and THMS for consistency.
- **For Change 7**: We do not currently have a position on adding more granular position types
- **For Change 8**: We support maintaining the use of LEIs and suggest removing references to National IDs. Retaining National IDs is not necessary, as LEIs are more suitable for comprehensive and standardised reporting.

Q.6: Do you support the draft Technical Advice related to Article 83 of CDR 2017/5654?

AMAFI supports the draft Technical Advice, as it aims to clarify and harmonise reporting requirements.

However, we note that article 83 and the related thresholds for weekly reports require further clarification.

As we understand it, for the first weekly report, which includes both futures and options, the obligation to publish the report applies only when both of the following thresholds are met: 1) there are at least 20 open positions in futures and options combined, and 2) the absolute amount exceeds 10,000 lots of futures and options combined.

For the second weekly report, which excludes options, the obligation to publish applies when both of the following thresholds are met: 1) there are at least 20 open positions in futures, and 2) the absolute amount exceeds 10,000 lots of futures.

We recommend that this distinction be explicitly clarified in the final report.