



Regulatory reform of EU commodity derivatives markets

**Expert Group on agricultural commodity
derivatives and spot markets**

Brussels, March 7th, 2013

EMIR

- Entered into force August 16th, 2012
- Exemption for non-financial entities under clearing threshold, hedging excluded
- Technical standards published February 18th

MiFiD II

- Expected timing:
 - On MAR, technical trilogue on non-political topics
 - Council negotiations on MiFID/R ongoing
 - Trilogue agreement expected this summer
 - 18 months to develop implementing legislation

Trading obligation of OTC derivatives

Commission objectives

- To mandate trading of OTC derivatives to take place on multilateral and transparent trading venues (i.e. Regulated Markets, MTFs and OTFs) in line with G20 commitments and in complement to EMIR
- Non financial entities not subject to this trading obligation when their positions are below the EMIR clearing thresholds

Trade transparency

Commission objectives

- Enhance price formation, reduce information asymmetries and promote competition
- Transparency should apply to:
 - **all execution venues, whether multilateral or bilateral, and irrespective of the trading technology used**
 - **all types of investors, whether retail or professional**
- Calibration of post-trade requirements:
 - **Scope: all derivatives reported to trade repositories**
 - **Delayed disclosure for large scale orders**
 - **Thresholds for large scale orders**
- Calibration of pre-trade transparency requirements:
 - **All types of trading model (including RFQ model)**
 - **Scope: derivatives subject to the trading obligation (i.e. liquid derivatives)**
 - **Thresholds for large orders**

Position limits

Commission objectives

- Position limits or alternative arrangements with equivalent effect to preserve market integrity and support orderly pricing

EP – Ferber report

- Hard position limits operated by trading venues
- Position checks only for positions held for hedging purposes
- Position limits and checks to be specified by ESMA

Council – Latest CY PRES texts

- Position limits applied by competent authorities and position management applied by trading venues
- Position limits do not apply to positions held for hedging purposes
- ESMA to specify the criteria to take into account by CAs when establishing position limits

Exemptions

Commission objectives

- To capture non-financial entities behaving like financial entities

EP – Ferber report

- Article 2(1)(i) exemption: additional criteria to specify the notion of "ancillary" activity; annual "notification" of exempt firms

Council – Latest CY PRES texts

- Article 2(1)(i) exemption: additional criteria to specify the notion of "ancillary" activity
- Two additional exemptions for JVs set up by local electricity / gas undertakings and ETS compliance buyers

Market Abuse Regulation

Commission proposals

- Extension of the scope of the market abuse prohibitions (including trades and orders to trade) to:
 - **instruments only traded on MTFs or the new OTF category**
- Inside information will include price sensitive information (i.e. alignment with the general definition) relevant to both the spot and derivatives markets
- Extension of the scope to market abuse occurring across both commodity and related derivatives markets
- Cooperation between financial and spot market regulators or other relevant public authorities

MAR – Inside information on commodity derivatives

Commission proposals

- Price sensitive information on commodity derivatives including information on the related spot commodity contracts
- Notably information required to be disclosed by law, market rules, contracts or customs

EP – McCarthy report: non cumulative conditions and addition of a third condition of information "having a distortive effect on the functioning of the commodity market concerned"

Council – CY PRES latest texts: cumulative conditions

Benchmarks

- Amended MAR/MAD proposals on 25th July 2012:
 - **Prohibit clearly the manipulation of benchmarks (including commodities benchmarks) and make such a manipulation a criminal offence**
- Public consultation from 5th September 2012 to 29th November 2012
- Future Commission legislative proposal expected scheduled for Q2 2013
 - **All options on the table except self-regulation**
 - **Benchmarks should not be subject to conflicts of interest, reflect the economic reality and be used appropriately**

Thank you for your attention