



The MiFID review: a regulatory reform of EU commodity derivatives markets

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

Brussels, December 18th, 2012

Pittsburgh G20 – September 2009

“...all standardised OTC derivative contracts should be traded on exchanges or electronic trading platforms, where appropriate, and cleared through central counterparties by end-2012 at the latest”

“...improve the regulation, functioning and transparency of financial and commodity markets to address excessive commodity price volatility”

G20 Cannes – Nov 2011

“As part of our financial regulation agenda, we endorse the IOSCO recommendations to improve regulation and supervision of commodity derivatives markets.

We agree that market regulators should be granted effective intervention powers to prevent market abuses.

In particular, market regulators should have and use formal position management powers, among other powers of intervention, including the power to set ex-ante position limits, as appropriate.”

EMIR

- All standardised derivatives to be centrally cleared
- All derivatives transactions to be reported to trade repositories
- Including all commodity derivatives
- Exemption for non-financial entities
- Currently in application

MiFiD II

- Comprehensive package:
 - **Markets in Financial Instruments Directive (MiFID II)**
 - **Markets in Financial Instruments Regulation (MiFIR)**
 - **Market Abuse Regulation (MAR)**
 - **Criminal Sanctions on Market Abuse Directive (CSMAD)**
- Expected timing:
 - **Trilogue process to start early next year**
 - **Political agreement before end of 1st quarter 2013**
 - **18 months to develop implementing legislation**
- **Entry into application of the whole package end-2014**

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

Eligible trading venues: the OTF category

Commission objectives

- To ensure that all multilateral trading takes place on a multilateral and fully transparent trading venue and ensure a level playing field between similar trading practices
- To have a clear delineation between multilateral and bilateral trading
- Alignment with the new Swap Execution Facility in the US

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**

Regulatory reforms of commodity derivatives markets

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

Delineation between financial and physical markets

Commission objectives

- To keep the same delineation as under MiFID I
- Classification of EUAs as financial instruments

EP – Ferber report

- Aims at clarifying the existing delienation by bringing existing implementing legislation into level 1

Council – Latest CY PRES texts

- Aims at clarifying the existing delienation by bringing existing implementing legislation into level 1

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

Interaction with REMIT

No overlaps or loopholes

Wholesale energy products covered under REMIT with a carve out for financial instruments

Definition of inside information under MAR and REMIT fully aligned

Reporting of transactions and orders to ACER with a carve out for derivatives reported under MiFID or EMIR + automatic exchange of information

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