



CMCE

- C/O Norton Rose Fulbright LLP
- 3 More London Riverside
- London SE1 2AQ
- United Kingdom

Tel: +44 (0)20 7444 5693; +32 (0)2 237 6140
Fax: +44 (0)20 7283 6500; +32 (0)2
Eml: conor.foley@nortontrosetfulbright.com
Wb: www.commoditymkts.org

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European Securities and Markets Authority
103 rue de Grenelle
75345 Paris Cedex 07
France

ESMA consultation on guidelines on information expected or required to be disclosed on commodity derivatives markets or related spot markets under Article 7(5) MAR

I am writing to you on behalf of the Commodity Markets Council – Europe (**CMCE**) and in relation to the Consultation Paper on ESMA's guidelines under Article 7(5) MAR.

CMCE is an industry group bringing together agriculture, energy, metals and other commodity market participants active across agriculture, energy, soft commodities as well as precious and base metal markets. It includes producers, merchandisers and end-users, and leading global trading venues for commodity derivative contracts. CMC Europe seeks to promote effective regulation for commodity derivative markets that reflects the key functions of these markets and that is consistent across jurisdictions.

We would like to thank ESMA for the opportunity to provide comments on the proposed guidelines. CMCE members are of the opinion that the upcoming guidelines need to be carefully calibrated in order not to create adverse implications for the functioning of the commodities markets. Our detailed comments on the select guidelines are included below.

Examples of information relating directly to commodity derivatives

Guideline 3

CMCE members note the legislative requirement regarding the information required to be published by trading venues in accordance with Article 58(1)(a) MiFID II and we agree with the guideline as proposed.

Guideline 4(a)

[do CMCE members have comments on the proposed guideline?]

Guideline 4(b)

CMCE members are broadly supportive of the inclusion of information affecting the microstructure of markets where commodity derivatives are traded. However, we would consider that some of the examples included in guideline 4(b) are key components of the commodity derivative contract rather than aspects of the microstructure. As such, we suggest references to delivery points and strike prices are moved to guideline 4(a), as they are better described as 'fundamental characteristics' of the derivative contract.

CMCE members are also concerned by the inclusion of 'change in the market participants entitled to act as market makers or liquidity providers' in 4(b). In our view this does not constitute information

typically disclosed by market operators and investment firms operating trading venue. We note that market operators and investment firms do not necessarily disclose the identity of persons with market making or liquidity provider agreements. In fact, some market making agreements may include confidentiality agreements. Where the identity of a market maker or liquidity provider is already disclosed it would be appropriate for this information to be included in the guidelines. We note, however, that this will not be consistent across market operators. We understand that ESMA does not intend to create new disclosure requirements through these guidelines, but given the current divergence in practice CMCE members are concerned that the summary at 4(b) may be misunderstood.

Proposed amendments:

[text to be included]

Examples of information relating indirectly to a spot commodity contract

Guideline 5

While broadly in agreement with the examples listed in Guideline 5 we would suggest it is amended to clarify that it includes only information provided by national statistics offices. We note that only national statistics offices (and Eurostat) would provide 'official' statistics however, the current drafting is not clear. We suggest this is amended to avoid confusion should another statistics office publish 'unofficial statistics'.

Proposed amendments:

[text to be included]

Guideline 6

We are concerned that the current drafting of Guideline 6 is too broad. In particular, the term 'information providers' is not defined and it is not clear who this refers to. We would encourage ESMA to introduce more specific language, specifying which 'information providers' it intends to cover with this guideline.

Proposed amendments:

[text to be included]

Examples of information directly relating to a spot commodity contract

Guideline 7

CMCE members note the legislative requirements introduced by REMIT and regarding the information required to be publically disclosed, and we agree with the guideline as proposed.

Guideline 8

CMCE members note the existence of various legal or regulatory provisions under national law, or the rules or practices of the spot market in energy commodities regarding the publication of information of auctions in the spot energy commodity contracts, and we agree with the guideline as proposed.

Guideline 9

CMCE members note statistical information made publically available in Joint Organisations Database Initiative (JODI) and we agree with the guideline as proposed.

Guideline 10

We note the inclusion of 'communications issued by conferences of oil related products producing countries', and caution that the publication of communications by OPEC is not always consistent. CMCE members are also concerned that the inclusion of all OPEC statements overstates the importance of these statements to the price of commodity derivatives. As such, this guideline should

only cover statements that are scheduled or reasonably expected and where they pertain to agreed production levels.

Proposed amendments:

[text to be included]

Guideline 11

CMCE members are concerned by the comparatively high number of guidelines pertaining uniquely to agricultural commodities. The inclusion of six separate guidelines could create the impression that there is more risk of finding inside information in relation to these markets. We would suggest that ESMA look to remove those guidelines that include information already covered in the more general guidelines and consolidate the remaining information into a smaller number of guidelines as detailed below.

With this in mind, Guideline 11 should be amended to remove references to 'agricultural commodities'. Information of on production, imports, exports and stocks is equally relevant to all commodity markets and the guideline should reflect this.

Proposed amendments:

[text to be included]

Guideline 12

Given that statistical information is covered in the Guideline 5, Guideline 12 seems to be unnecessary repetition. We would suggest that Guideline 5 and 12 are combined to create a single covering all relevant official national and European statistics.

Proposed amendments:

[text to be included]

Guideline 13

CMCE members we agree with the guideline as proposed.

Guideline 14

CMCE members we agree with the guideline as proposed.

Guideline 16

CMCE members we agree with the guideline as proposed.

Guidelines 15 and 17

CMCE members agree that information regarding storage and warehousing should be included in these guidelines. The current drafting, with separate guidelines covering agricultural commodities and metals is unnecessary. We would suggest merging Guidelines 15 and 17 to form a more general guideline on information pertaining to the storage of all commodities.

Proposed amendments:

[text to be included]

I, fellow CMCE members and our external counsel remain at your disposal to provide any additional information on the comments above that might assist you and your colleagues.

Sincerely,

[signature]

Jonathan Hill
Chairman
CMCE Executive Committee

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