CMCE response to the European Commission's targeted consultation on commodity derivatives markets

April 2025

I. DATA ASPECTS

(1) Do you believe that REMIT reporting, on the one hand, and MiFID/MiFIR/EMIR reporting, on the other hand, should be streamlined and/or more harmonised? If so, could you point to specific reporting items that need to be streamlined/aligned, and how? In particular, please explain whether the provision under REMIT which aims at avoiding double reporting for transactions already reported under the financial framework effectively allows to prevent double reporting and, if not, why.
CMCE answer
CMCE members are generally supportive of simplification and streamlining of reporting obligations. However, this should be approached with caution and not oblige market participants to revise established processes and IT solutions. Market participants only recently completed major implementation efforts for EMIR REFIT and are now focused on REMIT II. Introducing new obligations at this stage would risk unnecessary additional compliance costs. Any proposal to offer a simplified or streamlined reporting workflow should also permit market participants to continue reporting as before. Most CMCE members believe a stepwise approach would be most appropriate. We believe that all relevant data is being reported already. A non-energy trading venue member believes this is not the case. Most CMCE members believe work on simplification and streamlining should commence with improved data sharing between authorities followed by a comprehensive assessment. What is currently lacking is a joined-up approach that makes full use of existing data. Better inter-agency coordination and consistent interpretation of reporting obligations would improve supervisory outcomes without increasing burdens on firms. It is important for regulators to focus initially on improving these elements before making any further proposals which would require amendments to existing reporting systems or channels by market participants. Alongside this it would be preferable to have a moratorium on any further changes to existing reporting regimes to give sufficient time for regulators to review how recent changes have been implemented, bearing in mind the effect of their improved access and use of such data. Specifically, we recommend a thorough evaluation of existing reporting obligations across legislative acts and authorities. Most members believe that all relevant data is available under EMIR, REMIT, MiFID II and MiFIR. As such, it should first be assessed how requirements differ or complement each other. However, a non-

energy trading venue member considers that there is strong potential for reporting gaps, specifically in relation to OTC markets.

While mapping across different regimes is not always straightforward (e.g. different definitions for the same data field) reconciling existing reports is likely more feasible than developing a unified report from the ground up. In addition, one should consider which purpose reported data serves and how this can best be optimized. This would help with efficiency and accessibility and also the oversight purpose some of this data is meant to serve.

If the above exercise and sharing of data by authorities proves insufficient, further streamlining should be considered and the move to a fully integrated reporting framework pursued cautiously, involving extensive stakeholder involvement. Otherwise there could be a significant risk of merely adding another reporting burden onto the market, which would increase compliance burden and deteriorate EU competitiveness.

Within a clear assessment strategy, efficiency gains should be explored, also beyond a generic overhaul of the reporting requirements. For example, REMIT includes a provision intended to prevent double reporting. In practice this has not worked effectively. REMIT requires the reporting of orders as well as transactions, whereas EMIR is limited to transaction reporting, so firms which report under EMIR cannot rely on that to satisfy their REMIT obligations in respect of orders. Misalignments in eligibility criteria, formats, reporting logic, and delegation frameworks between REMIT and EMIR mean duplicative reporting remains common. This is the case also for non-EU entities, which may be required to report under both their domestic derivatives reporting regimes and EU REMIT for gas and power transactions. CMCE members believe harmonising data formats and transmission protocols across regimes- particularly between REMIT, EMIR, and MiFID- would improve operational efficiency and data quality, provided such alignment is carefully coordinated, avoids the introduction of new fields or obligations and is based on existing infrastructures.

A non-energy trading venue member notes that ensuring strategic coordination with physical market regulation (such as REMIT) is vital to address potential gaps in data transparency and to align respective supervisory oversight. Whilst duplicative obligations should be avoided, this member believes better alignment between regimes will support the ability of national competent authorities and, where appropriate, trading venues to ensure risks in related OTC markets to critical exchange-traded commodity derivative markets are able to be appropriately managed and mitigated, in line with evolving international standards.

We refer to answers in Section 3 (especially Q32) regarding CMCE members' views on the role of trading venues with respect to OTC markets. Most CMCE members, including an energy trading venue, oppose granting powers to trading venues to require OTC data.

(2) Reporting under MiFID/MiFIR/EMIR, on the one hand, and REMIT, on the other hand, can vary in terms of format and transmission protocols. In your view, which reporting standards and protocols should be used as reference (REMIT or MiFID/MiFIR/EMIR) if formats and reporting protocols were to be made uniform? Please also provide, if possible,

information on one-off costs and long-term savings from such harmonisation.
CMCE answer
We believe that aligning data formats and transmission protocols across reporting regimes has the potential, over time, to bring efficiency gains in terms of internal controls, reconciliations, and future compliance with regulatory changes. However, the implementation costs of any such alignment would be significant, especially in the near term. These costs would span across technology and operational functions at a time when firms are still absorbing, and in the case of REMIT II still implementing, the impact of recent reforms. While there is no clear consensus on which regime should serve as the reference point, the focus should be on reducing fragmentation and improving data sharing between authorities. A data-driven, format-level alignment would be the most practical and least disruptive starting point. The majority of CMCE members strongly caution against any new legislative proposal to impose harmonisation. Instead, improvements should be achieved through supervisory coordination and technical guidance, leveraging existing systems and avoiding changes that would require new infrastructure or substantial re-engineering. As mentioned in our answer to Question 1, the majority of CMCE members are of the view that the priority should be to enhance the use of existing data by regulators and improve coordination across supervisory authorities.

(3) Do you believe that a centralised data collection mechanism for collecting data related to REMIT and MiFID/MiFIR/EMIR reporting would alleviate the current reporting burden on market participants? **If so, how could it be alleviated and what level of possible cost savings could result from such exercise (order of magnitude), distinguishing one-off costs and recurring compliance costs (for instance, per year)? How would you structure such a possible centralised data collection mechanism (both in terms of data collection and dissemination/access) in a way that, on the one hand, would limit the costs of its set-up (i.e., using to the maximum the existing functionalities of trade repositories/RRMs) and, on the other hand, limit any possible one-off costs of adjustment for reporting entities?**
CMCE answer
We support, in principle, the concept of a centralised data collection mechanism, provided it builds on existing infrastructure and does not introduce new data requirements or additional layers of complexity or additional implementation costs. Any reform should aim to enhance efficiency, not shift burdens elsewhere in the system. A well-designed mechanism could reduce duplication and simplify oversight, provided that, to start, it consolidates existing reports submitted by market participants using existing data channels by collating reports from existing data repositories, such as registered trade repositories, authorised reporting mechanisms, and registered reporting mechanisms without altering the content or format of submissions and is subject to strict

data security requirements. Market participants should retain the ability to submit via their current processes (e.g. XML submissions), with direct access to their data and delegated reporting arrangements preserved.

Any centralized data collection mechanism would need to be made available subject to safeguards preventing it from abusing any dominant position it may have in the data collection sector, e.g. by charging unduly high fees or bundling fees into unduly large packages.

Initial set-up costs for CMCE members would primarily relate to re-routing submissions (if required) and adapting reporting logic, not wholesale system overhauls, if existing infrastructures are leveraged effectively. Over time, firms would benefit from improved control frameworks, fewer reconciliation breaks, and more consistent supervisory feedback.

CMCE members caution that new data fields or broader scope requirements would undermine the efficiencies sought. Instead, the emphasis should be on improving the accessibility, usability, and interoperability of data already submitted and on encouraging stronger cooperation and data-sharing among regulatory authorities within and across jurisdictions.

Any such arrangement should be implemented subject to clear and proportionate information-sharing "gateways", which guarantee that data on the centralized mechanism will be made available only to regulatory bodies with jurisdiction over the markets to which that data relates. There should be transparency over these arrangements.

However, this process would be incredibly complex and one-off costs would be significant. Therefore, we refer to our response to Question 1 in which we advocate for a stepwise approach, in which data sharing amongst authorities and a data strategy should be pursued as primary objectives in order to obtain a more comprehensive view of the market.

(4) Do you believe that data sharing through the abovementioned centralised mechanism consolidating the data would improve supervision by NCAs, NRAs, ESMA and ACER? And if so – in which way?

CMCE answer

Yes, we believe that improved data sharing through a centralised reporting mechanism would enhance supervisory effectiveness across relevant authorities. As mentioned under Question 1, the majority of CMCE members consider all relevant data is already available. However, this data is not always fully utilised or effectively shared across NCAs, NRAs, ESMA, and ACER.

A centralised mechanism would not only improve data accessibility but also foster more systematic cooperation between authorities. It could also enhance data quality, reduce duplicate supervisory requests, and support faster identification of potential reporting gaps and potential risks. Importantly, attention should be paid to legal and operational barriers to data sharing, with efforts focused on resolving these before new obligations are introduced.

(5) In the event that the centralised reporting mechanism is deemed an appropriate measure, by what entity should energy spot and derivatives markets data be consolidated? (please select the relevant items): a. **by trade repositories?** b. **by RRMs?** c. **by a new type of entity in charge of consolidating data collected by trade repositories and RRMs?** d. **some other entity? Please specify.** **Please explain.**
CMCE answer
We see value in enhancing the accessibility and usability of data by regulators through existing reporting channels, such as trade repositories and registered reporting mechanisms. Much of the data needed for effective supervision is already reported under various regimes. What is currently lacking is a joined-up approach that makes full use of this data. Better inter-agency coordination and consistent interpretation of reporting obligations would improve supervisory outcomes without increasing burdens on firms. This would also give authorities greater control and visibility without fundamentally altering existing reporting relationships. Alternatively (subject to our response in Q.3 above), a new specialised entity could be established to serve exclusively as a data aggregator, consolidating information already submitted under REMIT and financial reporting regimes. Such a structure should not introduce new data requirements or duplicate existing processes but rather ensure the data is harmonised, complete, and accessible across supervisory bodies. Any new structure must be carefully integrated into existing frameworks and allow adequate lead time for implementation.

(6) Do you believe there is a better alternative to a central data collection mechanism for improving collection and sharing of data collected under REMIT and MiFID/MiFIR/EMIR? If so, could you please describe it?
CMCE answer
We do not believe there is a better alternative to a centralised data collection mechanism at this stage. Please see our response to Question 5. We see a centralised mechanism, properly scoped and governed, as the most practical and proportionate way forward.

(7) In the event that the centralised reporting mechanism is deemed inappropriate, should an alternative approach be considered whereby NCAs have systematic access to the ACER central REMIT database, and vice-versa?
CMCE answer

While the objective of improving cooperation among regulatory authorities is understood, we caution that granting systematic cross-access between NCAs and the ACER REMIT database must be clearly defined and well-governed. Without a clear governance framework and coordination mechanism, this approach risks generating overlapping communications, duplicative requirements, and fragmented supervisory queries.

NCAs, ACER and NRAs should focus on improving information-sharing practices and MoUs they have in place with each other. Strengthening these frameworks can support better regulatory cooperation without introducing new compliance obligations or uncertainty for market participants.

(8) Do you believe that the rules on pre- and/or post-trade transparency (i.e., public dissemination of information on quotes and transactions) of commodity derivatives under MiFID/MiFIR should be amended, notably to include commodity derivatives traded on an MTF or an OTF? It is worth noting that making commodity derivatives subject to pre-trade transparency would imply that commodity derivatives would be included in the consolidated tape for OTC derivatives.If not, why?

If so, under which conditions?

Would you see any added value in introducing similar rules in REMIT aiming at pre- and/or post-trade transparency and, if yes, under which conditions?

CMCE answer

We strongly oppose the introduction of additional pre- and/or post-trade transparency requirements for commodity derivatives under either MiFIR or REMIT. The latest MiFIR review (Regulation (EU) 2024/791, Recital 8)[1] clearly concluded that pre- and post-trade transparency should not be based solely on trading venue status. Instead, it should apply only to instruments that are sufficiently standardised and liquid, criteria that generally exclude most commodity derivatives, especially those traded on MTFs and OTFs.

Existing mechanisms, such as RFQ protocols and auction windows, already provide appropriate transparency. Poorly calibrated requirements for illiquid instruments would risk undermining liquidity and harming market functioning. There is no added value in including commodity derivatives in a consolidated tape or applying pre-trade transparency rules under REMIT, particularly given the wholesale nature of these markets and the absence of retail investor protection concerns.

Pre- and post-trade transparency should be limited to instruments that are subject to the EMIR clearing obligation and that meet objective thresholds for standardisation and liquidity. Any extension beyond this would be disproportionate and counterproductive.

[1] Regulation (EU) 2024/791 of the European Parliament and of the Council of 28 February 2024 amending Regulation (EU) No 600/2014 as regards enhancing data transparency, removing obstacles to the emergence of consolidated tapes, optimising the trading obligations and prohibiting receiving payment for order flow: https://eur-lex.europa.eu/eli/reg/2024/791/oj/eng

(9) Do you believe that the consolidated tape should include pre- and/or post-trade data on exchange-traded commodity derivatives (i.e. commodity derivatives traded on regulated markets)? **If so, under which conditions (latency, transmission protocols, precise scope of products, etc.)?**
CMCE answer
We do not support the inclusion of commodity derivatives in the consolidated tape. The structure and function of commodity markets differ significantly from securities markets. Many commodity trades are arranged outside of trading venues and only subsequently executed on the venue (in accordance with the relevant venue's rules). As such, the intended transparency benefits of a consolidated tape do not translate effectively to this market structure and it is difficult to see what issue they would address. We stress that introducing a consolidated tape for commodity derivatives would not address a specific supervisory need and would risk adding complexity without tangible benefit for market participants or regulators.

(10) The recent MiFIR review has extended reporting requirements for transactions in some OTC derivatives that are executed outside of a trading venue. This extension does not concern commodity derivatives. Do you believe that transactions in OTC commodity derivatives that are executed outside of a trading venue should be subject to systematic reporting to NCAs under MiFIR? **If so, what would be the added value of such reporting compared to existing reporting requirements under EMIR and under REMIT? If not, why?**
CMCE answer
The majority of CMCE members do not support extending MiFIR reporting requirements to cover OTC commodity derivatives executed outside of a trading venue. Most of these contracts are already subject to reporting under EMIR (i.e. where they are considered financial instruments entered into by EU entities) or REMIT (for wholesale energy products and derivatives on them entered into by market participants, where not already reported under EMIR). These regimes already include mechanisms which are intended to prevent double reporting, and adding a new requirement under MiFIR would create unnecessary duplication without delivering additional regulatory value. The majority of CMCE members view that the scope of MiFIR transaction reporting under Article 26 should not be broadened, especially where the associated transparency obligations under Article 8a are not justified. Reporting non-standardised OTC instruments would impose significant additional costs and system changes on market participants with unclear benefits. It is not clear what issue this proposal is seeking to address and

how it is intended to achieve this. A non-energy trading venue member considers that trading venues should have regulatory powers to require position reporting OTC contracts that are related to critical contracts traded on venues, when they consider it appropriate to ensure market orderliness. This trading venue member believes that such visibility of OTC position data would assist venues in managing systemic risks and preventing potential disruptions.

(11) Do you believe ESMA has sufficient access to transaction data from trading venues and from market participants reported to NCAs? **If not, please explain what are the consequences and how you believe this should be tackled.**
CMCE answer
The majority of CMCE members consider that ESMA formally has access to transaction data through multiple channels, including venue-level reporting and transaction reporting under various regimes. These include both execution and clearing data for cash-settled and physically delivered products. However, ESMA might not have full or consistent access to all relevant transaction data reported to NCAs or energy regulators. This issue was evident in ESMA's TRV article on gas derivatives, which initially concluded that there was a high concentration of positions in European gas derivatives. A more complete dataset later showed that the level of concentration was within normal ranges. As ESMA indicated, the analysis of risks in natural gas derivatives markets was hampered by data fragmentation and the uneven availability of data between financial and energy regulators. Referencing our response to Question 1, we recommend tackling this through a stepwise approach, beginning with improved data sharing between authorities, followed by the development of a comprehensive data strategy—based on a cost-benefit analysis and an assessment of potential efficiency gains—before considering any further measures.

2. ANCILLARY ACTIVITY EXEMPTION

In providing your answers under this section, please specify, to the extent relevant, whether your assessment would differ depending on the type of commodity concerned (agricultural, gas, electricity) or when considering EUA markets specifically.

(12) The exception under Article 2(1), point (d), of MiFID sets out the conditions under which entities that deal on own account in financial instruments other than commodity derivatives are exempted from a MiFID license. In particular, this exemption does not require that this activity is ancillary to the entity's main business, unlike what is required for entities dealing on own account in commodity derivatives under point (j) of the same Article. However, the exemption under Article 2(1), point (d), is subject to different limitations. Do you believe persons dealing on own account in commodity derivatives should be treated the same way, with a view to benefit from a MiFID exemption, as persons dealing on own account in other financial instruments, in particular in not requiring that trading activities are ancillary to a main business? If yes, what would be the associated risks and benefits, in your view, of treating traders in commodity derivatives the same way as traders in other financial instruments who benefit from the exemption under Article 2(1), point (d) of MiFID? In providing your explanation, please also clarify whether:

- **the condition under item (i) of Article 2(1), point (d), which limits the MiFID exemption for entities that are market makers, would be fit for purpose considering the role played by certain non-financial entities as market makers in commodities markets**
- **and the condition under item (ii) of the same provision, which limits the MiFID exemption in case a non-financial entity performs non-hedging trades while being a member of a trading venue, would be fit-for-purpose as regards the activities of non-financial entities active in commodity derivatives trading**

CMCE answer

No. The ancillary activity exemption (AAE) under Article 2(1)(j) is essential for enabling non-financial commodity market participants to deal on own account in commodity derivatives. If these firms had to rely solely on the exemption under Article 2(1)(d), their ability to participate in commodity markets would be significantly constrained due to that provision's exclusion of market makers and members of trading venues.

These limitations would represent a major narrowing of the exemption scope compared to the current AAE. The market is at present largely disintermediated so that commodity industry participants can bring their trading interests directly to relevant trading venues, creating an efficient and more liquid price discovery process – and, thereby, likely improving the prices of underlying commodities for the consumer.

If restrictions were imposed on commodity firms' so they were only able to act as customers of the market without needing to become authorised investment firms, this would likely reduce the number of hedge providers available to EU non-financial entities, increase hedging costs, and impair access to essential risk management tools - ultimately raising costs for the real economy.

Currently, commodity firms act as market makers and liquidity providers. Their ability to do so is closely tied to the fact that such activity is ancillary to their core commercial functions. Preventing them from relying on the exemption if they act as market makers or trade on venues could lead them to scale back or cease such activities. If commodity firms cease such activities, this would mean that all EU non-financial entities (including the commodity firms themselves), would need to deal with banks/authorised investment firms when seeking to hedge and optimise their commodity exposures. The risk associated with such increased concentration of reliance on banks/ authorised firms to provide hedging to the whole commodities sector is amplified by the fact that commodity derivative trading is not a core business for most banks, which have periodically scaled back their presence in these markets. An overreliance on the banking sector, for example, could therefore increase systemic risk.

Non-financial commodity firms also participate in trading venues to execute both hedging and non-hedging trades and provide important market liquidity. If the mere act of trading on a venue for any trades that did not qualify as hedging invalidated their exemption, these firms might shift more of their activity off-venue, which could potentially undermine the price discovery function of trading venues and may increase counterparty credit risk due to an attendant reduction in clearing.

This restriction could have a number of unwelcome consequences, including:

- a reduction in liquidity on trading venues (and a potentially attendant increase in volatility), as the financial institutions remaining with direct access to trading venues would effectively operate as systematic internalisers, warehousing risk on their books and bringing only net exposures to the trading venues;
- a fragmentation of liquidity; and
- an increase in costs of underlying commodities being filtered through ultimately to the consumer (to take account of increased hedging costs, through dealer spreads, brokerage fees and less efficient price discovery on trading venues).

On that basis, CMCE members maintain that retaining the current AAE is critical for preserving market depth, competitiveness, and financial stability in the EU.

(13) Under Article 2(1), point j of MiFID, an entity can provide investment services other than dealing on own account in commodity derivatives or emission allowances or derivatives thereof to its customers or suppliers of its main business without a MiFID authorisation, provided that the provision of such investment services is ancillary to its main activity. Do you believe that this exemption as regards the provision of investment services to customers or suppliers is fit for purpose, and why?
If not, how would you propose to amend this?

CMCE answer

Yes, it is.

This exemption is fit for purpose as it enables commodity market participants to provide investment services to the customers or suppliers of their, or their group's, main business - such as industrial producers and other commodity-intensive sectors. This is critical for the EU industry, where hedging helps mitigate commodity price risks and supports financial stability, particularly in volatile market conditions.

Please see our answer to Q12 for an explanation of the vital role that commodity firms play in providing hedging services (and liquidity) in commodity markets.

For example, energy market participants with established trading and analytics functions can assist smaller energy producers (e.g. renewable energy producers, or battery storage facilities) by providing optimisation and energy management services, including advice and execution services in appropriate financial instruments.

Moreover, the exemption supports energy market participants in securing adequate volumes of supply for buyers ahead of physical delivery, ensuring continuity and reliability of industrial operations.

(14) Do you currently benefit from the AAE? If so, which part of the test is the most relevant for you/do you rely on? Did the CMRP make it easier for you to benefit from the AAE?

CMCE answer

Yes, some CMCE members currently benefit from the AAE.

Different members rely on different components of the test, with the main business test being particularly

relevant across all commodity asset classes. All parts of the test are considered clear, legally certain, and relatively well understood by market participants. The Capital Markets Recovery Package (CMRP) addressed the operational difficulties resulting from the impact of Brexit on the market size test, without changing the overall scope of the exemption. In the process, it also simplified the structure of the tests, easing the operational burden for both commodity firms and regulators. Importantly, the changes did not broaden the scope of the exemption or make it available to a wider group of entities. Rather, they removed the need for firms to rely on third-party data - an issue that had become more problematic following ESMA's discontinuation of market size data publication. Overall, the CMRP's adjustments made the exemption more workable in practice without broadening the fundamental regulatory perimeter.

(15) More generally, how do you assess the impact of the CMRP amendments and their application by NCAs on your activity, if any? Could you provide estimates of any cost savings and clarify their sources?
CMCE answer
The CMRP amendments have had a positive impact on CMCE members by reducing costs and improving operational and legal certainty. In particular, the removal of the market size test - with its varying thresholds for different commodity products and reliance on data published by ESMA - led to a tangible reduction in human resource demands and administrative burden. It also increased legal certainty because firms no longer had to wait until 31 March each year to obtain the ESMA market size data, to establish whether they could rely on the exemption in that year. (Often this legal risk went unremarked, as it was mitigated by ESMA Q&A, but that guidance was not required to be transposed into law at the member state level.) Eliminating the need to rely on third-party data has provided firms with greater legal and operational certainty. It has enabled commodity firms to perform the exemption tests in a timely and consistent manner, independent of external data limitations. More broadly, the increased regulatory stability resulting from the CMRP has allowed firms to operate with greater confidence. They can now make trading and investment decisions knowing they are less exposed to the risk of changes in market liquidity, participation levels, or geopolitical volatility - factors that are often outside their control– determining their ability to rely on relevant exemptions.

(16) What impact do you believe the alleviations brought to the AAE by the CMRP had on the liquidity and depth of EU commodities markets, if any? Could you provide any order of magnitude, for instance in terms of open interest, volumes, number and diversity of participants, bid/ask spreads, etc.?

CMCE answer

The alleviations brought to the AAE by the CMRP have helped to maintain the liquidity and depth of EU commodity markets. The scope of the AAE did not change, but the legal certainty and regulatory clarity resulting from it have enabled commodity firms to maintain (and in some cases expand) their investments in European markets, which otherwise may have been difficult for some. This has helped preserve market participation and contributed to a stable and functioning trading environment.

A more stable and liquid market environment enhances price signals, reduces volatility, and limits the risk of market abuse. It also supports consumer welfare and underpins a secure and sustainable energy future for the EU. In particular, liquid markets encourage long-term investments in critical infrastructure, such as renewables and LNG, by ensuring effective hedging mechanisms and transparent pricing.

(17) What is the most effective and efficient method to ensure that supervisors can monitor compliance with the requirements of the AAE? In particular, do you believe the abolishment of systematic (annual) notification from beneficiaries of the AAE to NCAs should be maintained or should these notifications be re-introduced? Please explain. Could you quantify costs if they were to be reintroduced?

CMCE answer

The notification obligation should not be reintroduced. It was removed for good reason, as it was deemed unnecessary by regulators and posed a legal risk to ordinary companies. Many ordinary commercial enterprises hedge their business using commodity derivatives (e.g. airlines) and risking being accidentally criminalised as a result of a failure to notify due notably to the fragmented implementation of the notification requirement. The application of the notification requirement varied from jurisdiction to jurisdiction whereby some, but not all, NCAs required non-resident entities to make a notification if they were transacting with a resident entity. (The notification obligation was, until it was removed, a condition of the use of the exemption.)

NCAs are aware of which market participants are active and prominent in these markets, through transaction reporting and position reporting data. They have no need for a notification requirement. NCAs have the ability under the current AAE to require those market participants to "report the basis on which they consider their activity … is ancillary to their main business".

(18) In general, do you believe that the existing AAE criteria are fit for purpose and allow to adequately identify when a trading activity in the commodity derivatives markets is ancillary to another activity (i.e., allows to bring the right type of entities into the MiFID regulatory perimeter)?
If yes, please explain.
If no, please explain what alternative ways to assess whether the trading activity/investment services provision of a firm is ancillary to its main activity you would propose. To the extent feasible, please describe a possible impact on the type and number of entities in scope of the AAE under your alternative approach.

CMCE answer

Yes. We believe the current AAE criteria are fit for purpose and appropriately identify when a trading activity in the commodity derivatives markets is ancillary to a firm's main business.

The three alternative tests - the "de minimis test", the "trading test", and the "capital employed test" - are clear, legally certain, and relatively simple to apply. Their thresholds are proportionate and suitable for the diversity of firms operating in commodity markets.

Reopening the legislative debate on these criteria so soon after their amendment during the CMRP risks creating regulatory instability. Such uncertainty could lead firms to reduce or reconsider trading on EU markets, or to postpone or reconsider investment decisions in the EU, ultimately undermining market confidence and putting liquidity and growth at risk.

(19) In which of the following aspects – if any – does the current scope of the AAE raise issues? (please select the relevant items, if any):
a. adequate conduct supervision of firms active in commodity derivatives markets and enforcement of the financial rulebook (e.g., for the purpose of monitoring market abuse)?
b. fair competition between market participants?
c. impact on energy prices?
d. liquidity of the commodities derivatives market?
e. safeguarding prudential and resilience aspects of firms benefitting from the AAE?
f. ability to monitor and identify future risks to financial stability (e.g., related to interconnectedness and contagion)?

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Please explain.
CMCE answer
None. We do not believe the current scope of the AAE raises issues in the areas identified. On the contrary, the exemption supports fair competition by allowing commodity market participants to access commodity derivatives markets, without being subject to the capital requirements and other regulatory constraints designed to address risks inherent in financial institutions. Removing (or narrowing) the AAE could create an uneven playing field by subjecting some firms to disproportionate regulatory burdens, which would lead to market distortions. It would also dramatically impact market liquidity by economically prohibiting participation in EU commodity derivatives markets by key commodity industry participants (including producers, refiners and end-users of commodities).

(20) Do you believe the de minimis test should be broadened by counting the following towards the EUR 3 billion threshold (please select the relevant items, if any): **a. trading activity in derivatives traded on a trading venue?** **b. trading activity in physically-settled derivatives? If so, should the threshold be adapted and how?**
CMCE answer
No. We do not believe the de minimis threshold should be broadened. It is appropriately calibrated as it stands. Including proprietary trading provides a more comprehensive measure of an entity's overall market activity and potential impact, which aligns with the objectives of maintaining robust oversight and reducing systemic risk. This approach is consistent with international precedents such as the U.S. Dodd-Frank framework[2], which applies an $8 billion de minimis threshold that similarly encompasses dealing activity irrespective of whether it is conducted for the entity's own account or on behalf of clients and the Swiss CHF 5 billion threshold for own-account trading activities.

(21) The de minimis test threshold is based on exposure in commodity derivatives 'traded in the Union'. Is this criterion on the location of trades fit-for-purpose? Please explain.
CMCE answer

[2] Set out in paragraph (4)(i)(A) of the definition of the de minimis exception under CFTC Regulation 1.3.

Yes, this should be limited to the EU location criteria, in line with other global regulators' requirements and expectations.

(22) Currently, the de minimis test threshold under MiFID is calculated on a net basis (i.e., by averaging the aggregated month-end net outstanding notional values for the previous 12 months resulting from all contracts). However, other jurisdictions use a gross trading activity threshold instead. Do you believe that it would be more appropriate for the de minimis test threshold under MiFID to be calculated on a gross basis, so as to measure absolute trading activity?
If so, how should the threshold be adapted?

CMCE answer

No, we believe this would undermine the very purpose of a de minimis threshold and would also introduce unnecessary operational burden and pressure on market participants. Under the U.S. Dodd-Frank regime, the de minimis threshold for swap dealer registration is set at $8 billion in aggregate gross notional dealing activity over a 12-month period. Any shift to a gross-based threshold in the EU should take into account this international benchmark to ensure consistency and avoid imposing disproportionate burdens on EU market participants. If a gross threshold were to be considered, it would need to be calibrated significantly higher than the current net threshold to remain proportionate.

(23) Currently, MiFID contains a single de minimis test threshold for all types of commodities derivatives. Do you believe the de minimis test threshold should differ depending on the type of commodity derivative market considered (e.g., energy derivatives vs agricultural derivatives)?
If so, why, and how should the individual thresholds be adapted?

CMCE answer

No. We do not believe the de minimis test threshold should differ depending on the type of commodity derivative market. Splitting the threshold into sub-categories would unnecessarily complicate the test driving unnecessary burdens.

The AAE regime had been widely regarded as over-complicated by market participants and regulators, until the CMRP simplified it. We would not support a return to overcomplexity.

(24) Currently the de minimis test threshold under MiFID is calculated including trading in commodity derivatives for an entity's own account. However, other jurisdictions exclude those transactions, and focus on dealing for the benefit of a third-party. Do you believe the de minimis test should continue to include, or instead exclude, all trading activity carried out for an entity's own benefit (proprietary trading), so as to only rely on dealing activities for the benefit of a third party/client?   **If so, why and how should the threshold be adapted?**
CMCE answer
We support the current formulation of the de minimis threshold.

(25) Considering the introduction of the de minimis test following the CMRP, and with a view to further simplifying the AAE, do you believe that the AAE could be made less complex by: **a. abolishing the trading test? If not, do you believe this test continues to be adequately calibrated? If not, how should it be adjusted?**   **b. abolishing the capital employed test? If not, do you believe this test continued to be adequately calibrated? If not, how should it be adjusted?**   **c. through other types of amendments? If so, how?**
CMCE answer
We believe all current tests under the AAE should be retained. CMCE members rely on different limbs of the testing framework depending on their corporate and trading structures, and the flexibility to apply the most appropriate test is essential.   The existing tests are sufficiently simple, operationally manageable, and provide the legal certainty needed for firms to confidently determine their eligibility. Removing or replacing them would create unnecessary operational burdens by forcing firms to overhaul established compliance processes. It could also radically narrow the scope of the exemption, effectively preventing some market participants from accessing European commodity derivatives markets, with unwelcome impacts on liquidity and price discovery as a result.   Maintaining the current structure allows market participants to continue using proven methods rather than relying on interpretive guidance or rebuilding their internal systems from scratch.

(26) If your entity currently benefits from the AAE, and should your entity not be in a position to benefit from the AAE following a review of the criteria, could you please provide an

assessment of the impact of being qualified as investment firm on your operations, and on your ability to maintain active participation in commodity derivatives markets? If possible, please include a quantitative assessment of the costs incurred by such a qualification and all its implications.
CMCE answer
Tightening the AAE would require many commodity firms currently relying on the exemption to become authorised under MiFID II in order to continue their existing business operations from within the EU. This would likely require third-country firms currently relying on the AAE to establish a physical presence in the EU in order to obtain MiFID authorisation, which may not be commercially viable for many commodity traders. The requirement for local establishment could further discourage participation in EU markets, reducing their attractiveness relative to other global trading hubs. This shift would carry significant regulatory and financial burdens. If the costs of authorisation - including capital, liquidity, and collateral requirements - outweigh the benefits of maintaining an EU presence, many firms would reassess their footprint and shift trading to bilateral OTC markets or to international venues in less restrictive jurisdictions. This likely would result in a reduction of EU27 market activity, undermining the EU's competitiveness and its ambition to develop deep, Euro-denominated commodity markets. Such a scenario would likely lead to a sharp fall in market liquidity, making it more difficult and costly for non-financial counterparties to hedge their commercial risks on EU markets - particularly during periods of margin volatility. It would also increase systemic risk by over-relying on the banking sector to provide hedging services despite commodity markets not being a core focus for many banks. If banks were to withdraw from these markets, there may be insufficient non-bank liquidity to step in, severely impairing risk management for industry, manufacturing, airlines, and other sectors. Ultimately, these developments would not lead to lower energy prices. On the contrary, they would reduce competition and price efficiency in wholesale markets, resulting in higher costs for end consumers and industry. Constrained investment capital, diminished price signals, and higher risk would also deter long-term investment and jeopardise progress toward EU energy security of supply and decarbonisation goals, including the objectives of the European Green Deal.

(27) To what extent do you believe the application of IFR/IFD prudential requirements, including those resulting from relevant Level 2 measures, as well as dedicated prudential supervision on all energy commodity derivatives traders, would have avoided or at least partially avoided the liquidity squeeze that such market participants suffered from during the 2022

energy crisis? To what extent would it have limited the need for public intervention providing some of them with the necessary liquidity to meet requirements on margin calls? Please substantiate your answer with quantitative elements, to the extent possible.

CMCE answer

We do not believe that the introduction or application of prudential requirements would have prevented or significantly mitigated the liquidity squeeze experienced by commodity firms during the 2022 energy crisis. The nature of the crisis - driven by extraordinary geopolitical and market factors - was not one that could have been addressed through capital or liquidity buffers.

Commodity firms differ fundamentally from traditional financial institutions. Their core activity centres on physical delivery and logistics within commodity asset classes, not on multi-asset speculative trading or high-risk financial structuring. Applying prudential rules designed for investment firms would not be appropriate, necessary, or proportionate for such entities.

Introducing such requirements could have unintended adverse consequences, including:

- Reduced market liquidity due to higher compliance costs,
- Increased price volatility, which would impact the real economy,
- Less hedging activity by commodity firms, increasing price risk and possibly raising credit risk exposure for lenders and the financial sector more broadly.

In the FSB's 2023 report[3] examining the financial stability aspects of commodities markets, the FSB concluded that markets were resilient through the shocks to the market seen in February/March 2022 in response to Russia's invasion of Ukraine. The report concludes that despite price volatility and the subsequent increase in margin calls, the commodities ecosystem was able to absorb the shocks, markets continued to function and there was little impact on the rest of the financial system. The imposition of additional prudential requirements on commodities firms would likely have conversely exacerbated the demand for liquidity caused by spikes in margin calls during this time and would not have averted the causes of such commodity market volatility.

(28) Should a review of the AAE lead to more entities being in scope of MiFID (and also thereby in scope of IFR/IFD):

1. **do you believe that the current categorisation in IFR/IFD (i.e., three categories of investment firms) should apply to those entities? Should instead a sui generis category be created for those entities newly covered by prudential requirements? If so, what**

[3] The Financial Stability Aspects of Commodities Markets, February 2023: https://www.fsb.org/wp-content/uploads/P200223-2.pdf

IFR/IFD requirements should apply to firms in that newly created category (e.g. capital, liquidity, reporting, oversight, etc) and why? If possible, please estimate the cost of compliance with this sui generis category within IFR/IFD, as detailed by you above?

2. **do you see merit in a decoupling, such that it triggers the application of MIFID (including its relevant provisions on supervision), without bringing those firms directly in scope of IFR/IFD (i.e. prudential regulation)? If so, please estimate, if possible, the cost of compliance with the sole MiFID provisions under this scenario.**

do you consider that all or only some MiFID requirements should apply? If the latter, which requirements should be retained (e.g. 'fit-and-proper' assessment)? If possible, please estimate the costs of compliance with those requirements of MiFID.

CMCE answer

We strongly caution against expanding the scope of MiFID and IFR/IFD to cover additional non-financial entities currently benefitting from the AAE. Should a review of the AAE nonetheless lead to more entities falling within the scope of MiFID II, they should be exempted from IFR/IFD under a "specialist commodity participant regime". This was the case historically, under CRR (and CRD before that) (see for example, articles 493 and 498 of CRR), as it was always well understood that the prudential framework designed for financial institutions was not fit for purpose when applied to commodity market participants.

The inclusion of industrial and commercial commodity market participants in the IFR/IFD regime would operate effectively as a prohibition on their participation in the EU commodity derivatives markets.

1. Categorisation under IFR/IFD and the case for a sui generis category:

We do not believe that the existing categorisation under IFR/IFD - designed primarily for financial investment firms - is appropriate for commodity trading firms. This has long been accepted and understood by the EU, and was the reason for the historic existence of the specialist commodity market exemptions under CRR/CRD. Such entities are fundamentally different from financial institutions, do not run the same risks and are not exposed to similar systemic risks: their business models are centred around the physical delivery of commodities, not financial intermediation, and they typically operate in commodity asset classes.

We strongly oppose the imposition of prudential or liquidity requirements on commodity market participants which are not currently required to be authorised as investment firms. This view applies irrespective of any potential changes to the AAE. In our view, there is no justification for subjecting firms that are not currently required to be authorised under MiFID to the IFR/IFD regime. That would be wholly out of line with international standards and would greatly disadvantage the EU.

For commodity firms which are required to be authorised as investment firms, however, we would support the re-introduction of the specialist commodity exemption regime formerly available under CRR/CRD. In the absence of such exemption, we would tentatively support the creation of a sui generis category under IFR/IFD. Such a category should reflect the distinct risk profile of commodity firms and apply proportionate requirements - particularly regarding capital, liquidity, and reporting obligations. Any new framework should be tailored to the nature of commodity trading and avoid imposing unnecessary burdens that could impact firms' ability to participate in EU commodity markets. The imposition of such a regime would require patient and careful review in tandem with the market – any hasty implementation would risk destabilising the EU markets.

It is difficult to estimate compliance costs precisely without knowing the structure of the new category, but any new capital and liquidity requirements - especially if based on current IFR/IFD thresholds - would likely represent a significant cost increase, with attendant increases in commodity prices for consumers. For many firms, this could render EU operations commercially unviable, leading to market fragmentation, reduced liquidity reduced transparency/price discovery, increased volatility and increased costs to end consumers.

2. Merit in a MiFID–IFR/IFD decoupling:

Yes, we see merit in decoupling MiFID authorisation from automatic application of IFR/IFD. We note this has historically been the case under the CRR/CRD regime, which contained specialist commodity market participant exemptions (e.g. article 493 and 498 of CRR) from the regulatory capital and concentration rule requirements. Should certain entities be brought under MiFID for supervisory and transparency purposes, they should not automatically fall under the full scope of prudential regulation, which is designed for financial institutions.

Such a decoupling could ensure supervisory oversight where necessary without creating regulatory burdens that are disproportionate to the actual risk posed. While we cannot provide precise figures, the compliance costs under MiFID alone – i.e. excluding IFR/IFD - while they may still be high, are likely to be substantially lower than otherwise would be the case if IFR/IFD were to apply

3. Selective application of MiFID requirements:

We believe that a selective application of MiFID II would add more complexity and would not fulfil the Commission's objective of simplification. If a tailored approach is considered, only a subset of MiFID requirements should apply. For example:

- Fit-and-proper requirements for key personnel could be retained to ensure competent governance.

- Organisational requirements and conduct rules might be selectively applied where appropriate to promote market integrity.

However, requirements designed for financial firms - such as detailed best execution obligations, client classification, MiFIR trade reporting, transparency obligations or portfolio management rules - would not be relevant to firms engaged solely in physical commodity trading or own-account hedging.

The cost of compliance with this narrower set of MiFID obligations would still require investment in systems and controls but would be significantly lower than the combined burden of full MiFID authorisation together with IFR/IFD.

(29) Assuming a review of the AAE that would tighten the access to the exemption, what would you expect to see in terms of effects on trading and liquidity? What about the opposite scenario (meaning a widening of the exemption)? Please explain, providing if possible quantitative analysis (in terms of impact on open interest, volumes, number and diversity of participants, bid/ask spreads.).

CMCE answer

A tightening of the AAE would have significant negative consequences for trading activity and market liquidity in EU commodity derivatives markets. Firms currently relying on the exemption - many of which are non-financial entities engaged in physical commodity supply chains - may be forced to withdraw from trading or reduce activity due to the operational and compliance costs associated with MiFID authorisation and associated requirements under IFR/IFD.

This would likely result in:

- A reduction in open interest and trading volumes, particularly in less liquid markets such as certain gas and power contracts.
- A narrowing in the diversity of market participants, with fewer non-financial players active alongside financial institutions.
- Wider bid/ask spreads, reflecting reduced liquidity and higher execution risk.
- Increased hedging costs for industrial firms, potentially passed on to end consumers.

Quantitative estimates will vary by product and timeframe, but even a 5–10% drop in open interest or participant diversity due to tightened access could materially reduce liquidity, especially in niche or regional commodity markets.

In some cases, firms may choose to relocate trading activity to non-EU jurisdictions, further diminishing the depth and competitiveness of EU commodity markets. These effects would run counter to the EU's goals of fostering euro-denominated commodity markets and deepening strategic autonomy in energy and raw materials.

Conversely, a widening of the AAE - while less disruptive - could encourage broader market participation and enhance liquidity, particularly from non-financial entities providing both demand and supply-side trading. This could:

- Increase open interest and traded volumes,
- Tighten bid/ask spreads, improving price discovery and execution efficiency,
- Attract a more diverse participant base, including smaller firms and new entrants,

And improve market resilience, by reducing reliance on a narrow group of authorised investment firms or banks for liquidity provision.

(30) What do you believe would be the expected effect(s) of a reviewed AAE on commodities prices (e.g., energy, agricultural commodities), depending on the changes implemented (tightening or loosening of the AAE)? Please explain.

CMCE answer

In line with our previous responses, tightening the AAE would likely lead to reduced liquidity in EU commodity markets, especially if non-financial firms are discouraged or excluded from participating. A reduction in liquidity would impair price discovery, increase bid/ask spreads, and raise hedging costs - ultimately this likely would lead to higher commodity prices for both industrial users and end consumers. In energy markets, this could translate into elevated gas and power prices, undermining affordability and competitiveness across the EU economy.

Conversely, a loosening of the AAE could support broader participation, strengthen market depth, and improve price formation. Increased liquidity would lower transaction costs and promote more stable and efficient pricing, particularly in less liquid or emerging markets. This likely would benefit the real economy by containing commodity input costs and enhancing the ability of firms to hedge risks effectively.

3. POSITION MANAGEMENT AND POSITION REPORTING

(31) Currently, under MiFID, reporting from market participants to trading venues on the positions held in instruments traded on those venues is performed by market participants themselves. Do you believe that this reporting could be carried out by clearing members, as it is the case in other jurisdictions, so as to reduce the burden on individual market participants and to enhance accuracy and completeness of reporting?
If so, how should it be structured?

CMCE answer

Yes. Clearing members (CMs) currently report similar information to exchanges. However, if proposals to expand position reporting requirements to include more detailed information on end-users are implemented, CMs would need access to additional data from their clients to comply. This would require set-up costs and additional resources, and a transitional period would be necessary to implement the changes effectively. There would otherwise be a risk of loss in data quality and communication lines towards the trading venues.

Given the already significant regulatory change burden currently being borne by CMs and market participants, the majority of members consider that now is not the right time to introduce such additional reporting obligations.

(32) In which of the following cases should venues trading in commodity derivatives receive the full set of information on positions of market participants trading on their venues? (please select the relevant items, if any):

- **positions held in critical or significant contracts based on the same underlying and sharing the same characteristics, traded on other trading venues**

- **OTC contracts that relate to the same underlying**
- **related C6-carve-out contracts**
- **positions in the underlying spot market**

If you replied yes to any item, please explain how the information can be collected by trading venues and reported in the most cost-efficient way. In particular, please specify your preferred option between:

a. imposing additional reporting requirements on market participants (to trading venues), or

b. achieving this through alternative means, such as by leveraging on the existing supervisory reporting channels (e.g., reporting to trade repositories or RRMs), or

c. resorting to the single data collection mechanism as referred to in 1.

Please clarify how your favourite option could be achieved and, if possible, please estimate the cost of additional data collection/reporting, to the extent relevant, for reporting entities. Please identify whether this could lead to any double reporting under the (revised) REMIT (and as will be further detailed in the revised REMIT Implementing Regulation)?

In case you deem that resorting to a single data collection mechanism would be desirable, please specify what types of safeguards should be put in place to maintain confidentiality on sensitive information from potential competitors.

CMCE answer

CMCE's membership is made up of market participants (including energy utilities, commodity producers/refiners and commodity merchants), commodity price index providers (including price reporting agencies) and trading venues.

CMCE members generally support improved data sharing among regulatory authorities, such as between national competent authorities, ESMA, and ACER. Leveraging existing supervisory frameworks can improve oversight without imposing additional reporting obligations on firms. In this regard, several members recommend that regulators prioritise more effective use of the large volumes of data already available under EMIR, MiFID II, and REMIT

CMCE members are generally not in favour of including C6 Remit-carve out contracts or spot market data in the position reporting framework.

The majority of CMCE members, oppose placing an obligation on market participants to provide trading venues with a full set of position data on a regular basis, particularly in relation to OTC contracts. Such a requirement would impose an unduly heavy administrative and cost burden, especially in the context of other recent regulatory reforms such as EMIR REFIT and REMIT II.

The majority of CMCE members consider that provision of information about activity on other trading venues could also raise serious concerns around confidentiality and competition, given that EU trading venues are commercial enterprises operating for profit (so that the sharing of commercially sensitive information about their businesses – such as position/volume data on their markets - with their competitors would be problematic and potentially illegal).

The majority of CMCE members do not believe that OTC positions - especially those traded outside the EU by non-EU entities - should be reported to EU trading venues. Oversight of cross-jurisdictional OTC activity should fall within the remit of regulators, not commercial venues. If there are legitimate concerns about market integrity or disorderly conditions, regulators should coordinate with their counterparts in relevant jurisdictions to access this information. It is vital that regulators invest in and improve their own information-sharing arrangements with each other so as to make use of the data already made available under transaction reporting regimes and position reporting regimes before seeking to impose further expensive and burdensome reporting obligations on market participants.

The majority of CMCE members consider that a more practical and proportionate approach would be to allow trading venues to request such position data only in specific, exceptional circumstances—such as during periods of extreme market stress or where there is a tangible risk of disorderly trading. All such data-sharing should remain subject to applicable competition law and any legal restrictions imposed by other regulatory authorities, including those in non-EU jurisdictions.

A non-energy trading venue member, on the other hand, considers that trading venues should have the ability to require OTC position data to identify and mitigate risks to the orderly functioning of their markets. This member believes that the EU should consider such approach which this member views as international best practice, including the UK's recently reformed approach under PS 25/1, which grants venues the authority to request such information when required, based on an assessment of OTC risks posed to its market..

However, the majority of CMCE members, including an energy trading venue, consider that, if such access is provided, it should be strictly limited to specific circumstances defined objectively, involving large or potentially disruptive OTC positions, and should always operate within a framework that ensures legal clarity, legal certainty, proportionality, and full compliance with confidentiality requirements and competition law and related rules, given their concerns (as explained in more detail above).

(33) With a view to enhancing the supervision of commodity derivatives markets, do you believe that both energy (where relevant) and securities markets supervisors (ACER, NRAs, ESMA, NCAs, collectively competent authorities) should have access to information on market participants active in derivates markets as regards their positions in (please select the relevant items, if any):

- **C6-carve-out contracts**
- **the underlying spot market**

Please explain whether your reply differs depending on the type of underlying commodity considered.

If you responded yes to either of the above, please explain how the information can be collected by competent authorities and reported in the most cost-efficient way. In particular, please specify your preferred option between:

a. imposing additional reporting requirements on market participants (to competent authorities), or

b. if instead it should be done through alternative means, such as by leveraging on the existing supervisory reporting channels, when they exist (e.g., REMIT reporting), or

c. as regards energy derivatives, by granting competent authorities access to the single data collection mechanism as referred to in section 1.

CMCE answer

We strongly support data sharing between regulatory bodies, as it can enhance regulators' understanding of commodity market dynamics and contribute to more effective supervision. Market participants already provide both physical and financial trading data to the relevant authorities, and we trust regulators to use this information appropriately within their respective mandates.

The majority of CMCE members do not support the introduction of any additional reporting obligations on market participants as a result of these information-sharing arrangements. These members consider that a more proportionate and effective approach would be to grant competent authorities access to a centralised data collection mechanism rather than requiring further direct submissions from firms.

A non-energy trading venue member considers that it is appropriate for market participants to provide OTC position data to trading venues, either on an ad-hoc or systematic basis, based on an assessment of OTC risks posed to its market. This member also believes that national regulators should have the ability to request OTC position data where needed and, where justified, share relevant information with trading venues to support their role in maintaining orderly markets.

As noted above in the response to question 32 the majority of CMCE members oppose placing an obligation on market participants to provide trading venues with OTC position data, whether on an ad hoc or systematic basis. They reiterate in particular that such a requirement would impose an unduly heavy administrative and cost burden, especially in the context of other recent regulatory reforms such as EMIR REFIT and REMIT II and the EU Commission's simplification and burden reduction initiatives. In addition, the majority of CMCE members consider that provision of information about activity on other trading venues (which, in the context of C6 products may also include OTFs) could also raise serious concerns around confidentiality and competition law, given that trading venues are commercial enterprises operating for profit (so that the sharing of commercially sensitive information about their businesses – such as position/volume data on their markets - with their competitors would be problematic and potentially illegal).

(34) With a view to enhancing the supervision of wholesale energy markets, do you believe that energy markets supervisors (ACER, NRAs) should have access to information on market participants active in wholesale energy markets as regards their positions in instruments subject to position reporting under MiFID?

Please explain whether your reply differs depending on the type of underlying commodity considered.

If you responded yes to the above, please explain how the information can be collected by ACER/NRAs and reported in the most cost-efficient way. In particular, please specify your preferred option between:

a. imposing additional reporting requirements on market participants (to ACER/NRAs), or

b. if instead it should be done through alternative means, such as by leveraging on the existing supervisory reporting channels (e.g., MiFID reporting), or

c. by granting NRAs/ACER access to the single data collection mechanism as referred to in section 1.

CMCE answer

Yes, provided that information is shared between regulators under properly established MoUs which have due regard to the scope of legitimate interest which each regulator has in any kind of information being accessed. Cooperation between ACER and ESMA on such basis, and the sharing of best practices, could thus be encouraged.

(35) The reporting of positions in economically equivalent OTC contracts under Article 58(2) of MiFID applies to investment firms only. Do you believe this requirement should be

extended to all persons (like the position limit regime)?
Please explain.

CMCE answer

The majority of CMCE members do not support extending the position reporting requirement for economically equivalent OTC (EEOTC) contracts to all persons. They consider that OTC contracts are already reported under other regulatory obligations - such as EMIR - often to the same authority (e.g., ESMA). Adding another layer of reporting would create unnecessary operational and compliance burdens without delivering meaningful improvements in market transparency or in the detection of market abuse.

In addition, they expect that any such change would place IT systems development burdens on the NCAs (which currently do not have to consolidate position reports received from multiple sources).

Moreover, many jurisdictions, including the UK's FCA, have moved away from the concept of EEOTC contracts entirely, further calling into question the value of maintaining or expanding this obligation in the EU context.

A non-energy trading venue member takes the view that the EU should consider international approaches such as the UK's approach, which removed the concept of EEOTC and replaced it with a more flexible regime. In this member's view, a proportionate framework allowing trading venues to access relevant OTC position data could better support orderly trading, without relying on the rigid and underutilised EEOTC construct.

(36) In your view, is the current definition of 'economically equivalent OTC derivatives' under MiFID fit for purpose?
If not, what changes would you propose?

CMCE answer

The majority of CMCE members believe (if the EEOTC concept is to be retained rather than deleted) that the current definition of "economically equivalent OTC derivatives" under MiFID II is fit for purpose and should not be changed.

However, such members strongly support removing the concept of EEOTC commodity derivatives from the MiFID framework. Eliminating the EEOTC definition would enhance legal certainty and reduce unnecessary regulatory complexity. They consider this is consistent with the concerns raised by industry participants - including during the original MiFID II legislative process - about the ambiguity and limited utility of the

EEOTC framework. Market participants warned that the definition would be difficult to implement, increase reporting burden and would create legal and operational uncertainty without improving market oversight or transparency. A non-energy trading venue member considers that the EU should assess the approach of the FCA through its recent reform of the commodity derivatives framework in the UK via PS 25/1. PS25/1: a) deletes the concept of EEOTC for the purposes of position reporting and limits (as no contracts existed within the narrow definition) whilst at the same time, b) will broaden the FCA's regulatory perimeter over OTC commodity contracts to ensure the FCA has oversight across a wider set of related OTC contracts and will enable trading venues, where appropriate, to require related OTC position data from members – where specific OTC risks are posed as per MAR 10.3.31 - to support the FCA's ability to monitor and intervene in the OTC market if necessary. In this trading venue member's view, given the cross-border nature of OTC trading in important commodities major jurisdictions, such as the EU and UK, should seek to ensure its regulatory frameworks have equivalent effects – to ensure market integrity, orderly pricing, and settlement in related derivatives markets. This trading venue member acknowledges that IOSCO's upcoming work to develop guidance for the consistent application of its commodity derivatives principles, will likely be a highly useful forum to ensure globally equivalent risk mitigation outcomes. We note that the majority of CMCE members do not support the approach put forward by this non-energy trading venue, for the reasons outlined in the answers to questions 32 to 35 above.

(37) MiFID requires that position reporting specifies the end-client associated to the positions reported. However, the legal construction of the current position reporting framework entails that, for positions held by non EU-country firms, such non EU-country firms are to be considered the end-client. This prevents the disaggregation of positions held by those non EU-country firms, and therefore the identification of the end-clients related to those positions. Does the lack of visibility by NCAs and/or by trading venues of the positions held by the beneficial owner (end client) when that position is acquired via a non EU-country firm raise issues in terms of proper enforcement of position limits and, in the case of trading venues, of their position management mandate? **If so, should the position reporting framework be amended to specify that non EU-country firms also have to report who is the end-client linked to the position they hold in venue-traded commodity derivatives and/or economically equivalent OTC derivatives?**
CMCE answer

We recognise the policy objective of improving transparency around the end-client level for positions held via non-EU intermediaries. However, we caution that any changes to the position reporting framework should be proportionate, operationally feasible, and respectful of third-country legal constraints.

Some members, including many market participants, emphasise that clarity is needed regarding the roles of trading venues and regulators in accessing and using such data. Some are concerned that requiring trading venues to monitor or disaggregate positions held by non-EU firms could raise legal and practical challenges and would go beyond the intended scope of trading venues' market oversight functions.

As noted in question 37, such members support the removal of the EEOTC concept from the MiFID framework.

They note that HM Treasury's post-Brexit proposals include a provision, instead, enabling trading venues to "take account" of relevant OTC contracts when monitoring markets. However, they consider the practical implications of this proposal are as yet unclear. If such a provision were to be introduced in the EU, it would be critical to clarify and narrowly define the scope of any such obligation. They consider that any ability for a trading venue to "take account" of OTC contracts should be strictly limited to what is necessary to preserve orderly trading on that venue and such members would not support any framework that would require trading venues to monitor OTC positions more broadly, as this would be disproportionate, operationally burdensome, and outside their core mandate.

A non-energy trading venue member considers that, where non-EU firms hold positions in contracts traded on EU venues, it may be appropriate for trading venues to have the ability to access end-client information in clearly defined circumstances, particularly where such positions could have a material impact on market orderliness. In this member's view, this type of access should be limited to what is necessary to support the effectiveness of the venue's position management framework, and implemented with appropriate legal and operational safeguards. This trading venue member is very supportive for the EU to give trading venue operators the power to obtain OTC position data (i.e. data over and beyond the very narrow definition of commodity derivative in MiFID, as financial instruments) as this power would go to the core of their regulatory functions to ensure that markets remain fair and orderly.

As noted above in the response to question 32, the majority of CMCE members oppose granting trading venues such powers to obtain such OTC position data, whether on an ad hoc or systematic basis and they reiterate in particular that such a requirement would impose an unduly heavy administrative and cost burden, especially in the context of other recent regulatory reforms such as EMIR REFIT and REMIT II and the EU Commission's simplification and burden reduction efforts. In addition, the majority of CMCE members consider that provision of information about activity on other trading venues (which, in the context of C6 products may also include OTFs) could also raise serious concerns around confidentiality and

competition law, given that trading venues are commercial enterprises operating for profit (so that the sharing of commercially sensitive information about their businesses – such as position/volume data on their markets - with their competitors would be problematic and potentially illegal).

CMC EUROPE

4. POSITION LIMITS

In providing your answers under this section, please specify, to the extent relevant, whether your assessment would differ depending on the type of commodity concerned (agricultural, gas, electricity) or when considering EUA markets specifically.

(38) What is your general assessment of the impact of position limits on the liquidity of commodity derivatives contract that are subject to them?
CMCE answer
Generally, and depending on the exact calibration of a position limits regulatory regime, position limits have the potential to put significant strain on the development of commodity derivative contracts, hampering the emergency and growth of markets that allow for hedging price risks stemming from e.g., long-term energy investments. We agree with the assessment of the Commission of this Targeted Consultation on Commodity Markets on page 18, which reads “As the initially introduced position limit regime under MiFID had proved to be overly restrictive, negatively affecting the development of in particular new commodity derivatives markets, notably energy derivatives, the CMRP adopted in 2021 introduced significant alleviations to that regime.” As elaborated in our answers to Question 38 and following, we believe the regime as currently calibrated is generally functioning well. Position limits should not be so strict as to inhibit legitimate risk management or reduce market depth. A granular, market-by-market analysis is crucial to ensure that limits are set at levels that are appropriate, proportionate, and sensitive to the liquidity profile of individual contracts. (See also our response to Question 41). Unduly restrictive position limits can have an unhelpful impact on liquidity. COMEX Aluminum limits, for example, may be a case where overly low limits have limited liquidity. Liquidity is a paramount concern for commodity derivatives markets, so it is essential to strike a balance between seeking to use position limits as part of the regulatory toolkit (alongside the Market Abuse Regulation, REMIT, position management rules, and the trading venues’ rulebooks) to maintain orderly markets on the one hand, and supporting sufficient liquidity on the other - particularly in the context of EU energy markets, where liquidity is critical to effective risk management. The EU MiFID II position limit regime as it was in place prior to the CMRP was globally unprecedented as it applied to all commodity derivatives traded on a trading venue and the related EEOTC contracts irrespective of the size of open interest and whatever the underlying instrument. Whilst the regime mostly did not hamper the liquidity of the most mature benchmark contracts, it did introduce severe adverse effects on the development of new and nascent markets as well as moderately liquid markets.

In the process leading up the changes implemented by the CMRP, between 2019 and 2021, European policymakers gathered significant evidence and feedback on the implications of the MiFID position limits regime on the development of liquidity in European commodity derivative markets. Following this, ESMA proposed in its final report of 19 November 2021 changes to the RTS 21 on position limits and the Commission adopted the respective CDR (EU) 2022/1302, which entered into force in August 2022. They concluded that "*The scope of position limits should be limited to commodity derivatives where position limits can play of valuable role, i.e. to well-developed critical contracts where price formation takes place and that have a role in the pricing of the underlying commodity and other related commodity derivatives. ESMA further notes that even when not subject to position limits, less developed contracts would remain subject to position reporting as well as to other MiFID II/ MiFIR obligations, such as transparency and transaction reporting requirements, to MAR and to position management controls by trading venues with therefore a limited additional risk for the operation of those commodity derivatives markets*".

Therefore, CMCE believes that the recent comprehensive analysis from the industry and EU policymakers on the position limits regime still holds, and past regulatory barriers were addressed by the MiFID "Quick-Fix". Therefore, we do not recommend amending the current position limit regime again, as it is working as intended.

(39) What is your general assessment of the impact of position limits on the ability of commercial (non-financial) entities to hedge themselves?

CMCE answer

Position limits when set at a level that is too restrictive may ultimately restrict the flexibility of market participants to hedge their risks effectively. This brings the risk that market participants shift volumes away to OTC markets, or opt for a less optimal hedging strategy compared to when no or more proportionately set limits would be in place. The current hedge exemption framework functions effectively for commercial (non-financial) entities and should be maintained with the existing definition of hedging. However, we note that if position limits are set at unduly restrictive levels (or if the hedging exemption is recalibrated so that it allows less headroom for hedging activity), they can discourage participation by hedgers altogether, particularly in less liquid or developing contracts. COMEX Aluminum serves as a relevant example, where overly low limits may have contributed to limited usage. For further context, please refer to our earlier response.

(40) Do you believe that position limits under MiFID, as amended by the CMRP, have achieved their purpose of preventing market abuse and maintaining orderly trading? Please explain.

CMCE answer

Whereas MiFID's main aim is to safeguard market integrity, the ability of position limits to support this objective has been subject to extensive discussions among regulators, policymakers and industry practitioners in recent years. For example, ESMA in their final report from April 2020, noted in section 3.2 that rather than being the main objective, preventing market abuse is only an indirect potential consequence of the position limits regime. Regardless, we believe that the assessment of whether position limits effectively prevent market abuse should be the responsibility of regulators, given their proximity to and understanding of local market dynamics. We are not, however, aware of any material instances of market abuse on EU trading venues which would have been prevented by tougher position limits since the amended regime came into effect. Further, it should not be forgotten that non-critical or significant commodity derivatives are and have remained subject to position reporting and recently enforced position management controls, and other MiFID and MAR obligations such as transparency and transaction reporting. Therefore, any concerns about high market concentration can be detected by ESMA and NCAs, irrespective of position limits.

(41) In your view, what was the impact of the reforms introduced by the CMRP (reduction of the scope of contracts subject to position limits, broadening of the hedging exemption to some financial entities, introduction of the liquidity provision exemption) on the liquidity and reliability of EU energy derivatives markets?
Please include any quantified impact in terms of open interest, volumes, number and diversity of participants, bid/ask spreads, etc. In particular, do you believe that the extra flexibility introduced had an impact on market participants' ability to access hedging tools in smaller, less liquid markets (e.g., local electricity or gas hubs).

CMCE answer

We agree with the Commission's assessment on page 18 of this Consultation. As noted, the original position limit regime under MiFID was overly restrictive and negatively impacted the development of certain commodity derivatives markets, particularly in the energy sector. The 2021 CMRP appropriately addressed these issues by introducing significant alleviations to the regime.

In particular, the CMRP narrowed the scope of contracts subject to position limits to those deemed most necessary. This shift reduced the compliance burden for market participants and eased concerns surrounding contracts where position limits were less appropriate. The broadening of the hedging exemption to include certain financial entities, along with the introduction of a liquidity provision exemption, also contributed positively to market functioning.

These changes have helped improve access to hedging tools, especially in smaller and less liquid markets such as local electricity or gas hubs. While the reforms have had a beneficial effect on market liquidity and reliability, it is important to acknowledge that position limits can still act as a barrier for some participants managing market risk. Therefore, it remains essential that position limits are tailored and targeted only to derivatives with clear, identifiable risk to ensure they support, rather than hinder, market development and risk management.

(42) Do you believe that the current criterion to determine whether a contract is a 'significant or critical contract' is fit for purpose, and why?   **If not, how should it be reviewed? In particular, do you believe that this definition should vary depending on the underlying commodity?**
CMCE answer
We believe the current criteria for identifying significant or critical contracts are generally fit for purpose. We concur with the ESMA final report on position limits and position management of April 2020 which argues for a targeted application of the position limit regime, i.e., by applying limits to well-developed 'critical and significant' where price formation takes place and that have a role in the pricing of the underlying commodity. We do not believe that since the implementation of the CMRP, the definition of such has changed.

(43) In your view, under the current position limit regime, could there still be scope for traders of some commodity contracts (spot or derivative) to use their positions in commodity derivatives with a view to unfairly influence prices or secure the price at an artificial level?   **If so, please indicate which types of commodity derivatives are particularly exposed to such risks, and whether any changes to the current position limits regime could address these situations. Please also indicate whether such changes could also affect the orderly price formation process for said contracts.**
CMCE answer
It would not be possible for a market participant to act in this way *legitimately*, as this would be a breach of the Market Abuse Regulation and, in wholesale energy markets, REMIT. This would be the case even if there are no applicable position limits for the contract in question.   The primary regulatory tools for preventing and addressing all forms of market abuse are the Market Abuse Regulation and, in wholesale energy markets, REMIT. The MiFID II position limits regime is more limited in scope and primarily targets specific forms of abuse, such as attempts to corner the market by abusing a dominant position. As such it is a blunt instrument as it focuses only on the size of a position, not on the participant's willingness to make the underlying commodity available on the spot or lending markets (so as to alleviate any potential squeeze).   In practice, the position limits regime under MiFID II does not appear to have played a central role in preventing market abuse, as also explained under Question 40. Rather, this objective has been more effectively achieved through the MAR/REMIT regimes alongside the enforcement of the trading venues' rulebooks (typically all policed via robust market surveillance and supervision systems), as well as through existing position management controls operated by trading venues.

Moreover, non-significant or non-critical commodity derivatives are still subject to other MiFID II obligations, such as position reporting and transaction reporting. These tools enable national competent authorities and ESMA to monitor for high levels of market concentration and other risks, regardless of whether MiFID II-mandated position limits apply.

While no regulatory system can completely eliminate risk, the current framework - including MAR, venue-based position management controls, and participant-level compliance procedures - provides an efficient and proportionate structure to mitigate market abuse. As noted by ESMA in its April 2020 final report (section 3.2)[4], the prevention of market abuse is only an indirect and uncertain effect of the position limits regime, and its actual contribution appears limited.

(44) Contracts with the same underlying and same characteristics subject to position limits are sometimes traded on several trading venues. Do you believe that the level of the position limit for those contracts should be set at European level (e.g., by ESMA), as opposed to the NCA responsible for the supervision of the main trading venue for that contract?
Do you believe ESMA should be in charge of monitoring and enforcing the position limits for those contracts?
Please explain.

CMCE answer

No. We believe that, in such cases, position limits should be set by the NCA that is closest to the market - specifically, the NCA where the largest volume of trading occurs, as is the case under the current regime.

In instances where trading volumes shift between venues and result in a change to the NCA responsible for setting the limit, a transitional period should be implemented before the new limit applies. This would help ensure market continuity and avoid unnecessary disruption.

Delegating this responsibility to ESMA could reduce flexibility and slow the process of adapting limits to evolving market conditions. In times of volatility or market stress, this could have unintended consequences and potentially exacerbate instability.

A current example of how the system works effectively is the TTF gas contract, which is traded across multiple venues. The NCA's approach to setting position limits for this contract demonstrates that the existing model can function well in practice.

(45) Some jurisdictions only apply position limits to physically-settled futures. Once captured by the position limits, cash-settled versions of those contracts however also count towards the

[4] ESMA, MiFID II Review report on position limits and position management, April 2020: https://www.esma.europa.eu/sites/default/files/library/esma70-156-2311_mifid_ii_review_report_position_limits.pdf

position limits. This means that futures that are not physically-settled (e.g., futures on power) cannot be captured by the position limit regime in those jurisdictions. Do you believe that position limits in the EU should only apply to futures contracts that are physically-settled? What would be the benefits or risks linked to the implementation of such an approach in the EU?
CMCE answer
As elaborated in our answers to Question 38 and following, we believe the regime as currently calibrated is fit for purpose. Nonetheless, we do agree with the rational that position limits may have most merit on physically settled contracts, where the risk of market manipulation is greater due to the finite nature of deliverable supply. Concerns around market abuse and market integrity are significantly lower for cash-settled contracts, where financial exposure does not result in control of physical assets. There is limited risk in this approach, as the economics of financially settled contracts tend to self-correct through price signals rather than supply distortions. Where appropriate, other tools - such as position management requirements and MAR/REMIT - can be used to monitor and address these financially-settled contracts. That said, we support retaining the core structure of the current position limits regime, provided it continues to focus only on those contracts where limits can play the most valuable role, i.e. on critical/significant contracts.

(46) Do you perceive an advantage or disadvantage of having separate position limits for physically and cash settled futures contracts for natural gas contracts, as is the case for Henry Hub futures in the US? For other contracts? Please explain.
CMCE answer
There is no need to introduce separate limits for cash and physically settled contracts, provided that the rules for aggregating positions across these contract types are clearly defined and consistently applied.

(47) Do you believe that the methodology and the level of the limits set by NCAs, for contracts subject to position limits, is adequate? If not, please indicate which contracts are in your view not subject to adequate position limit levels.
CMCE answer

Yes, we believe that the current methodology and the position limit levels set by NCAs are currently adequate. While the methodology may be somewhat generic, it delivers results that are predictable and stable - qualities that are important for maintaining well-functioning markets.

We caution against introducing further changes. The position limits regime was recently and extensively reviewed during the 2020/21 MiFID II "Quick Fix" process, and the resulting amendments only came into force in August 2022 (via CDR (EU) 2022/1302)[5]. Reopening the methodology so soon would add unnecessary complexity to operational and trading processes and result in costly adjustments for market participants. It could also prompt a reduction in liquidity, if any such changes were perceived to be out of line with standards in the US or elsewhere.

Moreover, during the previous review, both market participants and ESMA highlighted that applying position limits to all commodity derivatives would be counterproductive. It could hinder market development and act as a barrier to the launch of new contracts. ESMA's April 2020 final report[6], based on broad stakeholder consultation, supported a more nuanced approach - applying limits only to well-developed, 'critical or significant' contracts, and not to illiquid or nascent ones.

Looking forward, we believe there could be value in more formally leveraging the expertise of trading venues in the position limit-setting process, in line with our responses to earlier questions.

That said, if a review is undertaken, we consider that the framework could be further refined to ensure that limits remain proportionate and effective. Specifically, we support a more tailored approach with respect to the setting of limits, particularly in relation to the applicable volume thresholds and time periods. In our view, any such review or refinement should be undertaken through a transparent and inclusive consultation process involving regulators, trading venues, and market participants, to ensure that any changes are both proportionate and effective, and supported by those directly impacted by the regime.

(48) The Draghi report refers to the possibility to set stricter position limits, including by differentiating them by types of traders. Do you believe that position limits should be differentiated, depending on the type of traders/trading activity involved?
If so, how?

CMCE answer

No, we do not support differentiating position limits based on the type of trader or trading activity.

[5] Commission Delegated Regulation (EU) 2022/1302 of 20 April 2022 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the application of position limits to commodity derivatives and procedures for applying for exemption from position limits: https://eur-lex.europa.eu/eli/reg_del/2022/1302/oj/eng

[6] ESMA MiFID II Review report on position limits and position management: https://www.esma.europa.eu/sites/default/files/library/esma70-156-2311_mifid_ii_review_report_position_limits.pdf

Nor do we support the setting of stricter position limits (differentiated or otherwise). Liquidity is a pre-requisite for safe and effective commodity derivatives markets and stricter position limits (particularly, if they were out of line with regimes in other key regions) have the potential to undermine liquidity on EU trading venues.

We strongly prefer a consistent application of position limits to a clearly defined set of contracts. Introducing different limits based on trader type would add significant complexity to the regime without clear benefits. In our view, the existing exemptions framework already provides an effective and targeted way to differentiate between types of trading activity - particularly by allowing commercial participants to apply for hedging exemptions.

We also question the rationale for proposing stricter limits or differentiated applications, as outlined in the Draghi report. The report does not provide evidence of market abuse that would justify such changes. In practice, position management tools operated by trading venues - such as accountability levels and exemption oversight and not position limits - are far more effective in identifying and addressing potential market abuse, and do not differentiate by trader type. These tools allow exchanges to detect unusual or disruptive trading activity in real time, thereby supporting orderly and stable markets more effectively than static position limits imposed by regulators.

(49) Do you believe that the current exemptions from position limits as set out in MiFID, notably the hedging exemption, are fit-for-purpose?
If so, explain why.
If not, what changes to such exemptions would you propose? Are there certain markets where such exemption from position limits are more/less justified and is there merit to differentiate between types of commodity markets?

CMCE answer

Yes, we agree with the current exemptions regime and do not see a need for amendments. We strongly support the existing MiFID definition of hedging and recommend that it be retained.

A workable hedging exemption plays a critical role in enabling commercial participants to access hedging tools - especially in critical or physically delivered contracts, where effective risk management and price discovery are essential. The current framework ensures that these participants can hedge their exposures without being unduly constrained by arbitrary limits.

We caution that stricter position limits or a broader scope of contracts covered by the regime could undermine the ability of market participants to hedge effectively, particularly where they rely on third-party (non-group) financial institutions to facilitate that activity. In such cases, we support the introduction of a pass-through hedging exemption. This would allow financial firms that intermediate hedging activity to do so without breaching position limits, thereby supporting both hedging access and market liquidity.

Such an exemption should apply in cases where: ● A financial firm enters into an OTC position with a non-financial counterparty that is engaged in hedging activity (on its own or its group's behalf), and the financial firm offsets this OTC exposure with an in-scope commodity derivative contract; or ● A financial firm enters directly into an in-scope commodity derivative contract with a non-financial firm that is using the hedging exemption. Restricting the ability of financial institutions to provide this liquidity - especially during periods of market stress - could exacerbate volatility and reduce market resilience. We also note that the US regime provides a useful reference point: hedging exemptions are determined by the nature of the transaction being hedged rather than the category of market participant. A similar approach in the EU could enhance flexibility while maintaining appropriate safeguards.

(50) Do you believe that the hedging exemption is sufficiently monitored by the competent supervisors? If not, what is the most effective and efficient way for supervisors to monitor and ensure compliance with the hedging exemption?
CMCE answer
We would recommend directing this question to NCAs, as monitoring is primarily their responsibility. From our perspective, under the MiFID II framework, this function sits more appropriately at the exchange level. Trading venues are best placed to monitor position limits and detect unusual activity, given their real-time access to market data and participant behaviour. We recommend further cooperation between trading venues and NCAs to ensure oversight remains proportionate and effective, without imposing additional reporting burdens on participants.

(51) Do you believe that trading venues should play a greater role in granting hedging or liquidity provision exemptions from position limits to market participants?
CMCE answer
As elaborated in our answers to Question 38 and following, we believe the regime as currently calibrated is fit for purpose. Ultimately, exemptions from position limits should be granted by the authority that sets the limit. Should the European Commission nonetheless see the need to review the position limits regime, we believe that trading venues should play a greater role in granting hedging and liquidity provision exemptions from position limits. As the first line of oversight, trading venues are well positioned to assess exemption requests in the context of prevailing market conditions, liquidity needs, and the potential for market abuse. Their proximity to real-time market activity allows for more informed and responsive decision-making.

Empowering trading venues in this way would also align the EU position limits regime with international best practices. In the US, exchanges already perform this role, and the UK is moving toward a similar model. A consistent, venue-led approach across jurisdictions would enhance regulatory coherence while supporting orderly and efficient markets in the EU.

(52) Some jurisdictions allow supervisors and/or trading venues to grant ad hoc exemptions outside of the legally enumerated cases for exemptions for some contracts, if they perceive that the request is legitimate. Do you believe the EU should also introduce such a flexibility for supervisors and/or trading venues?
If so, please explain which specific cases could warrant an ad hoc exemption from position limits, and whether the power to grant an ad hoc exemption should be vested with an NCA or with ESMA.
If not, why?

CMCE answer

As elaborated in our answers to Question 38 and following, we believe the regime as currently calibrated is fit for purpose. Ultimately, exemptions from position limits should be granted by the authority that sets the limit.

That said, should the European Commission nonetheless see the need to amend the regime, we believe there is room for targeted flexibility - specifically, granting trading venues a greater role in providing exemptions where it clearly supports the orderly functioning of the market or meets legitimate commercial needs. This more limited form of flexibility is already in place in jurisdictions such as the US, and could be explored in the EU under well-defined parameters that preserve overall consistency.

(53) Do you believe that trading venues (please select the relevant items, if any):
a. should be given more responsibility in setting position limits in general, for those contracts that are by law subject to position limits (i.e., commodity derivative contracts that qualify as significant and critical or are not agricultural derivative contacts), instead of competent authorities?
b. should be in charge of setting position limits for non-spot month versions of contracts subject to position limits, thereby applying regulator-set position limits only to spot month contracts, as seen in other jurisdictions?
c. should be required or rather given a possibility to set their own position limits for contracts that are not subject to position limits by law?
Please explain the potential advantages or disadvantages linked to those options.

CMCE answer

We consider that the position limits regime is adequate as it currently operates. Nonetheless, if the position limits regime was to be reviewed in future, we support consideration of a transfer of responsibility for position limit implementation to trading venues, with appropriate oversight from NCAs and ESMA, as we describe below. Such a proposal should be subject to consultation with regulators and market participants. Trading venues are best placed to understand the market dynamics, liquidity profiles, and specific needs of their contracts, and they already operate sophisticated and effective position management regimes through which positions are monitored in real time with the ability to intervene through their rulebooks in response to large or unusual positions. Crucially, they are able to assess the impact of a position based on the risk it poses to market integrity - not just its size - offering a more holistic and flexible approach.

All of this takes place under the oversight of NCAs and ESMA and in alignment with their broader obligation to maintain orderly markets.

To ensure consistency across the EU while preserving the flexibility that makes venue-led systems effective, we suggest maintaining the current framework where high-level principles are set at EU level and implemented by trading venues in line with MiFID II Article 57(8).

However, we caution against introducing a highly prescriptive process that limits venues' ability to determine:

- On which contracts accountability levels should be set;
- When these levels should be actively monitored (e.g. spot vs. other months);
- Whether and how to request additional information when accountability levels are breached.

Regarding specific roles:

We do not support giving venues the power to set formal position limits for spot-month contracts, as this could lead to a fragmented and inconsistent approach across the EU; that responsibility should remain with NCAs to preserve consistent methodology, legal certainty and alignment with the existing EU framework, which already provides a harmonised methodology.

We also do not see a need to require trading venues to set position limits for contracts that are not already subject to position limits. These contracts are already effectively monitored through broader market surveillance and MAR obligations. Importantly, it should be noted that trading venues already have rights in their rulebooks in place to monitor, set and modify limits on positions for contracts in order to fulfil their obligation to ensure orderly trading and settlement and the integrity of markets. This includes the setting and enforcing of limits, should this be deemed necessary. We believe this is sufficient and that an obligation to impose position limits upon all contracts would again hamper liquidity and put undue burden on trading venues.

(54) Do you believe that the current regulatory set-up sufficiently allows to enforce position limits on non EU-country market participants?
Please explain.

CMCE answer

Yes, we believe the current regulatory framework is sufficient to enforce position limits on non-EU market participants. These participants are subject to the same rules and obligations as EU firms when trading on EU trading venues, and there is no differentiation in the treatment they receive.

Regulators already receive adequate information to monitor and enforce compliance, including through data access arrangements and equivalence frameworks established with third-country regulatory bodies. If a non-EU participant were found to be in breach of position limit requirements, NCAs would have clear legal grounds to act, including (but not limited to) excluding that participant from the market if necessary.

(55) Do you believe that the position limits regime should also apply to 'C6 carve-out' products? If so:
a. please explain why, including through references to any impact you would you expect on the underlying spot market, liquidity and energy prices.
b. if a framework for position limits were also to be developed under REMIT, how should it be structured in order to ensure coherence with financial legislation and avoid duplication?
c. do you believe position limits should be set at European level (e.g., ACER), or by NRAs?
d. in your view, should NRAs/ACER be empowered to grant ad hoc exemptions from such limits?

CMCE answer

No, we do not believe that position limits should apply to C6 carve-out products. These instruments, by definition, are not classified as commodity derivatives under MiFID II and should not be monitored or regulated in the same way as other commodity contracts.

The C6 Carve-out was introduced in recognition of the fact that the physical wholesale energy markets were subject to wholly different policy considerations from those in financial instruments. That remains the case, and one cannot simply "map over" MiFID II requirements of this kind to such markets. Any assessment of whether position limits are required in such markets should begin with an identification of any market failure which could have been prevented or mitigated through position limits. We are not aware of any instances of cornering or similar abusive activity having occurred on EU OTFs in wholesale energy products, and on that basis, we see no case for instituting position limits. We note, again, that REMIT provides a comprehensive, and actively enforced, framework to control all forms of market abuse in wholesale energy products on - and off - EU OTFs.

Applying position limits to these products - particularly under a parallel framework such as REMIT - would introduce significant legal and operational uncertainty. It risks blurring the regulatory boundaries between physical and financial energy markets and could create duplication or even conflict with existing MiFID-based limits, especially where contracts share the same underlying.

A thorough review of the potential effects of bringing these instruments into the wider MiFID/MiFIR scope is necessary before considering any such measure. Without this, there is a serious risk of unintended consequences that would harm market functioning and the competitiveness of EU energy markets. Uncertainty of this nature is detrimental to growth and market confidence.

Further, implementing a separate position limit regime under REMIT would be highly inefficient. It would likely require a new set of calculation methodologies and create overlapping compliance burdens for participants. We note that these C-6 carve out instruments are already subject to transaction reporting under REMIT II and requirements on detection and monitoring of market abuse under REMIT II and MAR. We therefore consider that regulators already have sufficient transparency. Imposing a position limit regime on C6 carve out products would not bring clear benefits to regulators and would diverge from the evolving UK REMIT framework, which is becoming more liberal and, consequently, more attractive to market participants.

(56) Do you believe that energy and financial regulators should cooperate in the process of setting position limits for wholesale energy products?

CMCE answer

To the end of achieving regulatory certainty, we support mantaining the current set-up of responsibilities where the setting, monitoring and enforcing of position limits lies with the NCA. Should the NCA however see the need for a more holistic view on the relevant energy markets, then the sharing of data and dialogue should be facilitated between the NCA and relevant energy regulatory authority, in line with our response to Question 1. We believe regulators should work more closely together to improve harmonisation across regimes, which would help align regulatory requirements with market participants' operational processes. Greater coordination could reduce complexity and increase efficiency in compliance and risk management.

5. CIRCUIT BREAKERS

In providing your answers under this section, please specify, to the extent relevant, whether your assessment would differ depending on the type of commodity concerned (agricultural, gas, electricity) or when considering EUA markets specifically.

(57) What is your assessment of the effectiveness of IVMs and of their enforcement by NCAs (or the adaptation of existing circuit breakers following the adoption of Council Regulation (EU) 2022/2576) in avoiding excessive price volatility of energy-related derivatives during a trading day?
CMCE answer
Some CMCE members operate with a tried and tested suite of dynamic and configurable systems and controls that enable them to manage periods of increased price volatility while maintaining orderly market conditions. These tools ensure that new information and rapidly changing events can be expressed through supply and demand dynamics without resulting in disorderly trading. Enhancements made to these mechanisms, particularly in response to Council Regulation (EU) 2022/2576, have further strengthened their effectiveness. We believe IVMs are an important component within a broader set of risk management and market control tools used by exchanges. They play a valuable role in mitigating excessive volatility, but their effectiveness depends on their calibration and interaction with other safeguards in the overall control framework. Intra-day volatility management mechanisms used by some CMCE members include Reasonability Limits (RLs) and Interval Price Limits (IPLs). The RL functionality acts as a pre-trade control that rejects or constrains order execution when proposed prices exceed predefined thresholds relative to the anchor price. The IPL functionality serves as a temporary circuit breaker aimed at reducing the likelihood and magnitude of short-term price spikes or aberrant movements. This mechanism is based on three configurable parameters: the IPL Recalculation Time (during which price movements are restricted relative to an anchor price), the IPL Amount (the maximum permissible price movement during the recalculation time), and the IPL Hold Period (a short trading pause when thresholds are breached). Following the adoption of Council Regulation (EU) 2022/2576, some CMCE members conducted consultations with a wide range of market participants, including utilities, oil and gas companies, banks, trading houses, proprietary trading firms and asset managers, on proposals to temporarily adjust the calibration of circuit breakers, in particular for gas futures contracts. These consultations revealed broad support for revisions to

the IPL Recalculation Time and IPL Amount to accommodate heightened market uncertainty, with clear feedback that a continuous feed of price signals was critical for effective trading, hedging, and price discovery. In particular, participants expressed a strong preference for maintaining a minimal IPL Hold Period to avoid unnecessary trading interruptions. As a result of this consultation and in response to Article 15 of the Council Regulation, some CMCE members recalibrated their automated exchange controls, lengthening the IPL recalculation time from 3 seconds to 2 minutes, thereby increasing the system's sensitivity to rapid market movements. Following the expiry of the Council Regulation, the recalibrated parameters were retained due to their effectiveness.

(58) Do you believe trading venues should be permanently required to implement static circuit breakers to further restrain excessive daily volatility for commodity derivatives specifically, as a complement to circuit breakers already implemented? **What would be the associated advantages and disadvantages?** **If you replied yes, how should those static circuit breakers be calibrated?** **In particular, should those static circuit breakers apply only to certain types of commodity derivative instruments, or differ depending on the type of commodity derivative considered?** **More specifically, should IVMs similar to those provided for by Council Regulation (EU) 2022/2576 be introduced and applied on a permanent basis?** **Please explain.**
CMCE answer
No, trading venues should not be permanently required to implement static circuit breakers to further restrain excessive daily volatility for commodity derivatives specifically, as a complement to circuit breakers already implemented. In general, energy derivatives are prone to price volatility as they are subject to inelastic demand and supply, at least in the short term. Therefore, unanticipated changes in demand or supply or news about fundamentals may generate price volatility. Static circuit breakers can be well suited to manage large price swings compared to a static point in time (typically the previous settlement price). However, for energy derivatives where supply-demand dynamics, geopolitical events and global economic conditions are factors specific to this market, dynamic thresholds that respond to events around the globe are needed. Therefore, dynamic circuit breakers, properly calibrated and aligned with market conditions, would manage intraday price volatility more effectively and adequately than a combination of static and dynamic circuit breakers. Some CMCE members consider that dynamic circuit breakers are better suited to avoid unnecessary disruptions, following a 2022 consultation on adjustments to existing interval price limits framework. Market participants from all industry types (Utilities, Oil & Gas majors, Trading Houses, Banks, Funds and HFT firms) active in Dutch TTF Natural Gas Futures were represented in the consultation. Participants clearly indicated that they need a continuous feed of the market price signal (with as little interruption as possible) to manage their energy positions effectively. The continuity of the high-quality on-exchange price discovery process will contribute to limiting uncertainty and risk in the markets.

A second observation resulting from this consultation was that participants share the view that liquidity will flow to wherever price discovery is most efficient. Even when a circuit breaker has triggered a trading halt on a regulated market, the value of the underlying assets can continue to change. Traders may carry their trades to alternative venues, such as OTC venues or dark pools, and therefore, a trading halt does not stop the market price from moving. The OTC transactions can impact the perceived value of the assets even when trading on the regulated market is temporarily suspended. As stated by market participants in their feedback, there is a risk that liquidity will move into OTC markets, which will impact volatility across products such as indexed instruments and other non-held markets, potentially leading to undesired consequences such as reduced market depth and wider bid-offers.

Empirical research also has shown that off-main venue trading during main venue circuit breakers exhibits an increase in volatility (Fabozzi and Ma, 1988)[7], an increase in transaction costs (Chakrabarty et al., 2011)[8], and a weakened price discovery process (Gomber et al., 2012)[9]. The potential increase to volatility and decline in liquidity relating to the above factors will also manifest in increased margin requirements as CCPs increase margin in line with their approved models and risk management requirements to reflect the increased risk of these products and the potential impact on the CCPs' ability to successfully execute their default management plan.

Therefore, dynamic circuit breakers, rapidly adapting to changing market conditions, will reduce uncertainty and improve access to pricing information which then will contribute to lower volatility as market participants are able to make informed decisions.

Some CMCE members have dynamic circuit breakers in place to manage short term volatility in an adequate manner. These dynamic circuit breakers are the Reasonability Limit and the Interval Price Limit. Dynamic circuit breakers, properly calibrated and aligned with market conditions, are a better fit for energy markets. Dynamic circuit breakers will limit unnecessary disruptions, help assure the continuity of the high-quality on-exchange price discovery process, limit price uncertainty and risk in the markets and, therefore, manage the price volatility more adequately than static circuit breakers.

Some CMCE members are opposed to the permanent introduction and application of IVMs similar to those outlined in Council Regulation (EU) 2022/2576. In its report on the implementation and functioning of the IVM Mechanism, ESMA considers that the already existing circuit breakers under MiFID II are sufficient to

[7] The Over-The-Counter Market And New York Stock Exchange Trading Halts, Frank J. Fabozzi, Christopher K. Ma, November 1988, https://doi.org/10.1111/j.1540-6288.1988.tb01279.x

[8] The Choice Of Trading Venue And Relative Price Impact Of Institutional Trading: Adrs Versus The Underlying Securities In Their Local Markets, Sugato Chakravarty, Chiraphol N. Chiyachantana, Christine Jiang, December 2011. https://doi.org/10.1111/j.1475-6803.2011.01298.x

[9] The Effect of Single-Stock Circuit Breakers on the Quality of Fragmented Markets, Peter Gomber, Martin Haferkorn, Marco Lutat & Kai Zimmermann, June 2012, https://doi.org/10.1007/978-3-642-36219-4_5

deliver on the objective to limit excessive intra-day price volatility without introducing a second layer of circuit breakers via IVMs. Moreover, the implementation of Council Regulation (EU) 2022/2576 has been superseded by the MiFIR review that includes adjustments to circuit breaker arrangements. In this context, ESMA has been tasked to develop principles that trading venues should meet when designing and operating circuit breakers.

(59) **What should be the effect of hitting those static price bands (should this trigger for instance trading halts or order rejection mechanisms)? In your view, what are the pros and cons of each mechanism?** **If you favour trading halts, what duration do you recommend for an appropriate trading halt that is long enough for market participants to assess the situation and their position in the derivatives market and for the market to 'cool off'? Would your assessment differ according to the type of underlying commodity considered?**
CMCE answer

Commodity derivative markets are different from, for example, equity markets, as when trading is halted on energy derivatives markets, the underlying physical market continues to be subject to price movements. Moreover, physical energy markets for example are naturally volatile due to their short-term nature, requiring the market and its price signal to move more rapidly to resolve demand and supply imbalances on a near real-time basis. Energy is generally difficult to transport and store, and fluctuations in supply and demand result from phenomena such as infrastructure constraints, unplanned outages, and unexpected weather conditions.

The forward (futures) market expresses a view on the fundamentals of the market in terms of monthly flows (or even quarterly and/or seasonal) and is, as a result, less prone to the dynamics of near real-time supply and demand balance. Volatility in energy derivatives markets largely depends on the tightness of the market. Moreover, fluctuations in the price of energy close to its delivery will even out over time, and the monthly derivatives contracts, which are the main building blocks for the energy derivatives markets, logically have lower price volatility.

To be an effective risk management tool, however, commodity derivatives contracts need to reflect the underlying physical market. In line with principle 4 of the IOSCO standards for the Regulation and Supervision of Commodity Derivatives Markets[10], the price of a derivative will naturally converge with the price of its underlying closer to the settlement of the derivative.

Restricting the availability of commodity derivatives markets through frequent or prolonged trading halts or order rejection mechanisms could undermine their risk management function. When price formation on these

[10] IOSCO, Principles for the Regulation and Supervision of Commodity Derivatives Markets, January 2023: https://www.iosco.org/library/pubdocs/pdf/IOSCOPD726.pdf

markets is constrained, the prices of exchange-traded derivatives are no longer tested, potentially leading to a misalignment with the underlying physical market.

As outlined in our responses to questions 57 to 59, trading halts disrupt the price discovery process, depriving market participants of risk management tools. This is highly undesirable as it introduces more risk to the system, ultimately leading to higher costs for the underlying commodities. Trading halts should, therefore, be kept to a minimum in number and duration.

No, our assessment would not differ according to the type of underlying commodity considered.

(60) Do you see any risk in static circuit breakers applying to spot month contracts, considering possible implications on physical delivery, as well as possible valuation challenges and divergences between spot and futures prices? Please explain.
CMCE answer
Yes, we see clear risks in applying static circuit breakers to spot month contracts, particularly due to the operational and financial implications associated with physical delivery obligations. Where market participants hold positions approaching expiry, a trading halt caused by a static price band could prevent them from adjusting or exiting those positions. This may result in an inability to meet delivery commitments or force positions into delivery unintentionally, with potentially significant financial and logistical consequences. Moreover, the imposition of static circuit breakers in the spot month may create artificial distortions between spot and futures prices, disrupting valuation models, hedging strategies, and overall market integrity. Static mechanisms, by their nature, are not responsive to real-time changes in market fundamentals, especially in energy markets, where price volatility can result from legitimate shifts in physical supply and demand. Intervening in such price formation processes, particularly in contracts nearing expiry, risks amplifying uncertainty rather than containing it.

(61) Do you perceive that implementing static price bands would risk moving trading to OTC markets? What would be possible mitigants to prevent such migration?
CMCE answer
Yes, we believe that implementing static price bands would likely accelerate the migration of trading activity to OTC markets or alternative venues. When price discovery is interrupted or constrained on regulated venues, market participants will naturally turn to bilateral or alternative venues to manage risk, even if those alternatives offer less transparency. This is particularly true in energy markets, where timely execution and continuous pricing are essential. Some CMCE members note that such migration should not necessarily be viewed as negative. OTC markets can offer important flexibility, particularly in terms of credit support and collateral arrangements, that can help reduce liquidity stress during periods of market volatility. In contrast, the restrictive eligibility of collateral under clearing obligations and the opacity of CCP margining practices can

increase liquidity risk, especially when margin requirements rise unpredictably during stressed conditions.

Moreover, if participants are deprived of access to flexible OTC risk management tools due to overly prescriptive circuit breaker regimes, their ability to hedge exposure may be further impaired, introducing more, not less, systemic risk.

Mitigating this migration would require a careful balance between volatility control and market functioning. This includes ensuring that any safeguards do not interfere with continuous trading, are properly calibrated to the characteristics of each commodity market, and are based on thorough market consultation. Importantly, any regulatory approach should preserve a degree of optionality and flexibility for market participants to manage risk across a range of venues.

(62) Do you believe the dynamic static breakers implemented by trading venues in general function adequately?
If not, please explain the challenges and please indicate any potential improvements to their functioning.

CMCE answer

Yes, regulated markets need sufficient flexibility to develop the parameters for halting trading that are appropriately calibrated in a way which takes into account the liquidity of different asset classes and sub-classes, the nature of the market model and types of users and is sufficient to avoid significant disruptions to the orderliness of trading. Rather than mitigating excessive volatility, improperly calibrated or designed circuit breakers can inadvertently amplify market moves.

(63) Do you believe energy exchanges trading in spot energy products or C6 carve-out products should also implement mechanisms similar to circuit breakers?
If so, how should those be calibrated?

CMCE answer

No, we do not support the blanket application of circuit breaker-type mechanisms to energy exchanges trading spot energy products or C6 carve-out products. There is currently no evidence to suggest that imposing additional trading halts in these markets would reduce volatility or improve market functioning. On the contrary, historical examples indicate that abrupt or poorly calibrated interventions can undermine market confidence, increase volatility, and disrupt price discovery.
European exchanges already operate with well-established and market-tested volatility control mechanisms that are understood by participants and have evolved over time to reflect market realities. Additional

requirements would risk interfering with the functioning of these markets without a clear regulatory justification.

Some CMCE members recognise that energy exchanges should retain the flexibility to design and apply volatility controls that are appropriate for the specific characteristics of the markets in which they operate. Any mechanisms must be tailored to reflect the liquidity of different asset classes and sub-classes, the design of the market model, and the profile of users, and should aim to prevent significant disruptions to orderly trading. Overly prescriptive or static approaches would likely prove counterproductive.

It is also essential to acknowledge that spot energy markets already operate within a robust regulatory framework. Market participants are subject to multiple layers of oversight, including the MAR, REMIT II, and, where relevant, MiFID II and EMIR. These regimes collectively address market integrity, transparency, and systemic risk mitigation, including through transaction reporting, risk mitigation requirements, and position management obligations. Moreover, the regulatory reach of MAR and REMIT already extends into spot markets, capturing market abuse offences and ensuring transparent market behaviour.

Given the strong linkages between physical and derivatives energy markets, any volatility observed in spot prices is often the result of real-world fundamentals, such as storage limitations, geopolitical tensions, or supply disruptions. These price movements serve a critical signalling function in efficient markets and should not be artificially constrained. As noted by the Financial Stability Board in its 2023 report on the Financial Stability Aspects of Commodities Markets[11], the commodities ecosystem largely absorbed the shocks of 2022, with no widespread disruptions to market functioning, underscoring that existing safeguards were sufficient even under extreme stress.

Furthermore, the risk of applying trading rules designed for financial instruments to participants in the physical energy market must not be underestimated. Imposing circuit breakers or similar financial market mechanisms on spot energy products could inadvertently restrict firms' ability to hedge, distort pricing, and contribute to liquidity constraints, ultimately introducing rather than mitigating systemic risk. Regulatory capital and liquidity requirements, if extended to physical market participants, could exacerbate these pressures, particularly during periods of heightened volatility or constrained credit provision by banks.

Before considering additional interventions, we urge regulators to prioritise the effective use of the vast amount of data already collected under existing reporting regimes. Many of these frameworks have only recently been updated, and their full impact on market stability and transparency is still being observed. Rather than introducing new measures, authorities should focus on data-driven supervision, cross-agency cooperation, and enhancing the practical use of existing regulatory tools.

[11] FSB, The Financial Stability Aspects of Commodities Markets, 20 February 2023: https://www.fsb.org/2023/02/the-financial-stability-aspects-of-commodities-markets/

6. ELEMENTS COVERED BY THE DRAGHI REPORT

In providing your answers under this section, please specify, to the extent relevant, whether your assessment would differ depending on whether natural gas or electricity is concerned.

(64) Do you believe a general obligation to trade in the EU should be introduced? If so, for which instruments should this obligation apply? Please explain.
CMCE answer
We strongly oppose introducing a general obligation to trade in the EU. A similar proposal for a strict location policy under REMIT was already rejected in 2024 by both the European Parliament and Council, and the underlying rationale for its rejection remains valid. Introducing such a requirement now would be redundant and disproportionate, particularly as the strengthened reporting and registration obligations introduced under REMIT II already address supervisory transparency concerns effectively. Notably, Article 13b of REMIT II significantly enhanced ACER's capability to request relevant data from market participants for supervisory purposes, and non-EU firms are already subject to mandatory registration and comprehensive trade and position reporting obligations covering wholesale energy products and relevant derivatives under the current framework. Moreover, imposing a mandatory EU trading obligation could negatively impact the competitiveness and attractiveness of European markets. For instance, it risks circumventing the carefully defined controls specified in EMIR and MiFIR regarding the inclusion of OTC commodity derivatives into the derivatives trading obligation, potentially triggering significant adverse impacts on market functioning. We emphasise that OTC commodity derivatives contracts should only be considered for inclusion within the derivatives trading obligation (i.e. the requirement to trade on an EU trading venue) after being explicitly included in the scope of the EMIR clearing obligation in accordance with Article 5 of EMIR, and then only pursuant to the established criteria and procedures defined in Article 32 of MiFIR.

(65) If such a general obligation were to be introduced, please set out any possible impact on

EU market participants' ability to hedge, notably with non-EU counterparties.

CMCE answer

Introducing a general obligation to trade in the EU would likely have considerable negative implications for EU market participants' ability to hedge effectively, particularly with non-EU counterparties. The proposal would restrict access to markets offering optimal pricing and liquidity conditions, consequently reducing flexibility in managing price and supply risks. Market participants could face increased hedging costs, decreased liquidity, and ultimately reduced competitiveness if trading venues outside the EU offer more efficient terms for trading instruments or products not subject to the obligation.

Restrictions of this nature would particularly affect markets with global relevance, such as gas and LNG. Limiting EU-based firms' access to non-EU venues could impair their ability to manage energy price risks efficiently, weakening overall market liquidity, potentially reducing the EU's security of supply, and diminishing Europe's attractiveness as a trading hub. Moreover, this measure could trigger the migration of liquidity and market participation towards venues located outside the EU, exacerbating fragmentation of European financial and commodity markets.

(66) If such an obligation were to be introduced, please set out any possible impact on market participants and the functioning, depth and liquidity of the markets concerned.

CMCE answer

The introduction of a general trading obligation within the EU would significantly impair market participants' capacity to trade and hedge effectively. Restricting trading venue choice could hamper market-making activity, leading to decreased liquidity, diminished market depth, and increased bid-offer spreads. Consequently, transaction costs would rise, impairing EU participants' competitiveness relative to international competitors.

The knock-on effects on market depth and liquidity could have systemic implications, particularly in energy markets, potentially increasing volatility and limiting price discovery efficiency. Such adverse market impacts likely would ultimately translate into higher costs for end consumers.

(67) Do you believe that MCM is a useful tool to limit the episodes of excessive – and significantly diverging from global markets – prices in the EU?
Please explain.

CMCE answer

No, we do not see the Market Correction Mechanism (MCM) as a tool to manage energy price volatility. Artificial price caps inherently undermine the fundamental risk management functions of energy markets, creating a disconnect between derivative valuations and the underlying physical market reality driven by genuine supply and demand dynamics. By imposing artificial constraints, an MCM distorts market prices, making derivatives markets less reflective of true physical market conditions. This distortion would impair market participants' ability to hedge and manage their underlying price risks accurately, as derivative values no longer provide accurate economic signals. If market participation reduces due to the uncertainty introduced by a price cap, liquidity in the markets will diminish leading to wider bid-ask spreads, volatility and margin requirements. Ultimately, these cost increases will be borne by consumers. In short, a price cap, such as MCM, does not decrease the global market price of energy, but may create upward price pressure on the underlying good and rather increased price volatility in Europe.

We stress that rather than introducing (or maintaining) artificial price control mechanisms that may exacerbate systemic risks, policymakers should prioritise measures addressing the root cause of energy volatility and physical energy supply constraints.

(68) Building on the experience of the MCM, do you think dynamic caps based on external prices (whether in the shape of the MCM or in another shape) would help avoid situations where EU energy spot or derivatives prices significantly diverge from global energy prices, and should therefore be codified in legislation?   **If not, please explain why, and specify, if relevant, to what extent you believe price divergences between EU prices and international prices can be warranted.**   **If so, please explain to which products you believe such dynamic caps should apply (e.g., spot/derivative, OTC/venue-traded) and how such dynamic caps should be calibrated (e.g., reference price, frequence at which the boundaries are renewed, etc.). Please point to potential risks and opportunities.**
CMCE answer
We do not support the introduction of dynamic price caps, whether based on external benchmarks or alternative formulations, as a tool to manage price divergence in EU energy markets. Such interventions, including the MCM, represent a departure from the core principle of free and transparent price formation, which underpins efficient and liquid energy and commodity markets. Artificial constraints on market prices risk distorting the supply-demand signals that are critical for short-term dispatch, long-term investment, and the overall integrity of the market.   While instances of divergence between EU and global prices have occurred, they are rooted in fundamental characteristics of the energy market. As also confirmed in the recent Clean Industrial Deal, for example, "*Europe's dependence on imported fossil fuels in the main cause of higher, and more volatile, energy prices. […] The current geopolitical and market uncertainty drive up investment costs which are passed on to consumers.*" In such cases, price differentials are not only economically rational but essential to inform investment, incentivise behavioural adjustments, and signal where additional infrastructure or supply diversification is needed.

A dynamic cap would attempt to suppress these signals and could result in mispricing of physical and financial energy contracts. It could also introduce legal and operational uncertainty, particularly regarding valuation practices by central counterparties and the management of collateral and margin requirements. Furthermore, the introduction of any such tool may undermine trust in European pricing benchmarks and incentivise market participants to trade on alternative venues or reference external benchmarks located outside the EU.

EU price caps also risk undermining the security of energy supply for the EU for energy which is tradeable on global markets (e.g. LNG).

(69) Do you believe that the MCM or other dynamic caps could have an impact on the attractiveness and/or stability of EU commodity derivatives markets? **If so, please explain how.**
CMCE answer
Yes. We believe the MCM, and any similar dynamic cap mechanism, could have severe negative implications for the attractiveness, functionality, and long-term stability of EU commodity derivatives markets. A price cap distorts market-based pricing mechanisms and increases uncertainty for both trading venues and participants. It creates an artificial ceiling that may not align with market fundamentals, particularly during periods of stress or supply scarcity. As the ECB[12] and ESMA[13] have noted, such mechanisms can lead to heightened volatility, particularly as prices approach the cap threshold, prompting abrupt behavioural shifts by market participants. This may trigger a rapid shift in trading away from EU venues toward bilateral OTC markets or non-EU exchanges, reducing transparency and increasing systemic risk. Additionally, a price cap directly affects how CCPs determine settlement values and margin requirements for cleared transactions. If an exchange price is capped, but the underlying market continues to price higher through OTC trades, CCPs may rely on bilateral market valuations instead of centralised price discovery. The mere presence of the MCM, even if untriggered, introduces valuation ambiguity that discourages participation and encourages capital flight to jurisdictions offering more predictable trading conditions. There are also important geopolitical and economic implications; for example, in a global gas market, LNG suppliers will naturally favour jurisdictions where they can sell at market-clearing prices. If EU benchmarks are perceived as administratively capped, Europe risks being deprioritised in global allocation decisions, particularly

[12] European Central Bank (ECB), 'Opinion of the European Central Bank of 2 December 2022 on a proposal for a Council regulation establishing a market correction mechanism to protect citizens and the economy against excessively high prices' (CON/2022/44).
[13] ESMA, 'Effects Assessment of the impact of the market correction mechanism of financial markets', 1 March 2023.

during tight market conditions. Over time, this could erode the EU's reputation as a reliable counterpart[14] and limit the investment needed to secure new infrastructure or long-term supply contracts.

Finally, regulatory unpredictability of this nature reduces the willingness of firms to participate in or expand operations in EU commodity markets. This could lead to structural declines in liquidity, wider bid-ask spreads, and reduced market resilience. We note that the MCM price cap has not yet been triggered, so that the adverse impact it will likely have on EU markets in such a case, has not yet been experienced.

(70) What is your assessment of the impact of a triggering of the MCM on trading conditions and financial stability?
CMCE answer
A triggering of the MCM almost certainly would have significant and adverse effects on both trading conditions and broader financial stability within EU energy markets. As explained under Question 69 as well, the European Central Bank (ECB), likewise the ESMA and ACER reports, has expressed concerns that the design of the previously implemented MCM jeopardised financial stability in the euro area. The activation of a price cap such as the MCM would introduce immediate operational uncertainty. Price discovery on exchanges could become impaired if capped prices no longer reflect market fundamentals. In such a scenario, CCPs and other market participants would need to rely on OTC valuations, undermining the efficiency and integrity of the cleared market. This could result in an increase in initial and variation margins due to elevated perceived risk, triggering procyclical liquidity calls on market participants during already stressed conditions. From a systemic perspective, triggering the MCM could also incentivise participants to exit the EU market, shift to bilateral trading outside of cleared markets, or avoid hedging altogether. Reduced participation would lower market liquidity, widen spreads, and increase volatility, thereby increasing collateral requirements and operational risk across the system. The regulatory uncertainty created by such mechanisms would also hamper long-term investment in physical infrastructure and risk management tools, affecting the EU's broader energy transition objectives. During the energy crisis, these financial stability risks associated with the MCM and the market destabilising consequences of increased margin requirements, as outlined above, fortunately did not materialise, mainly because gas prices dropped well below the activation conditions of this mechanism before it became active in February 2023. This decrease in gas prices, coupled with reduced market volatility, instead allowed central counterparties (CCPs) to lower margin requirements. However, we may not be so fortunate in the future. If the price of gas is artificially capped below market value, Europe no longer offers a competitive price to attract LNG shipments, which would jeopardise short-term supply. In fact, recent reports indicate that LNG

[14] Rystad Energy research and analysis, GasMarketCube, European Commission, UK BEIS. Only includes SPA signed in 2022, 2023, 2024 and up to 3rd February 2025 (for deliveries by 2040); MoUs and HoAs are excluded.

cargoes have been redirected to Europe[15] when needed, but this trend could easily reverse under a capped price. Moreover, imposing a price cap could jeopardise long-term supply as it would undermine Europe's credibility as a serious customer in the global gas market. The artificial price controls would make Europe a less attractive and reliable partner for suppliers, who may prefer markets where they can sell gas at competitive, market-driven prices.

We urge the Commission to prioritise supervisory coordination, better use of existing reporting data, and a stable legislative environment that supports both physical and financial market resilience.

(71) Are you aware of any impact on margins (or other trading costs) of the mere existence of the MCM, notwithstanding the fact that the mechanism has never been triggered?
If so, please provide details on such impacts, ideally providing quantitative input.

CMCE answer

Yes, we are aware that the mere existence of the MCM has already had observable impacts on margining practices and trading costs, despite the mechanism never being triggered.

As noted by several exchanges and market infrastructure providers, the introduction of the MCM led to increased uncertainty around benchmark valuations and price discovery. In particular, the potential for a cap to artificially limit exchange-traded prices meant that CCPs began to consider bilateral OTC pricing for margin calculations. This introduced a two-tier pricing environment and undermined confidence in the integrity of centrally cleared benchmarks. ICE estimates for example an increase of around $33bn in margin calls from the CCP to CMs to account for the market increasingly moving OTC.

Market participants have indicated that the uncertainty surrounding the mechanism also deterred participation and led to wider bid-offer spreads. Pricing adjustments to account for the additional perceived regulatory risk were noted by some firms, with concerns that these effects may translate into higher transaction costs that were passed on to end-users. Furthermore, there was considerable concern and anxiety in the market around how market participants with physical liabilities would be able to hedge their risks. This likely caused some hesitation with regard to internal investments. Non-EU suppliers were also anxious about committing to supplying the EU markets for the same reasons.

We emphasise that the risk of contagion between spot and financial markets is already comprehensively addressed through existing regulations, namely MAR, REMIT II, EMIR, and MiFID II. Additional interventions such as the MCM are not only unnecessary but risk undermining the very efficiency and stability they seek to protect.

15 Financial Times. "LNG tankers change course to Europe as gas storage levels drop", 23 January 2025. https://www.ft.com/content/36707962-a09f-426a-bd56-a18363b35a4b

We urge regulators to recognise the sufficiency of the extensive, existing regulatory architecture and to prioritise regulatory coherence and stability going forward.

(72) Do you believe that requirements similar to some/all organisational requirements imposed on MiFID firms as market participants should also be imposed on market participants in spot energy markets, without requalifying those entities as investment firms, and why?   **If so, could you please make specific references to those organisational requirements, which are currently foreseen under MiFID and should in a similar way apply to market participants in spot energy markets? Where possible, could you please estimate expected costs to your entity, and potentially other entities that would have to comply with those new requirements, distinguishing one-off costs and recurring compliance costs (for instance, per year).**
CMCE answer
No. We do not support the extension of MiFID-style organisational requirements to spot energy market participants. MiFID imposes such requirements to serve regulatory objectives (such as investor protection) which do not correspond to those required in the wholesale spot energy markets. Such measures would impose disproportionate costs and complexity without a clearly defined regulatory need. CMCE in general does not agree with the underlying notion that spot market participants are subject to a less comprehensive regulatory framework for trading. In addition, it is important to understand that spot markets and derivative markets serve different purposes. Imposing additional requirements would duplicate existing regimes, increase compliance costs, and risk discouraging participation in energy markets without delivering meaningful supervisory benefits.   Regulations only should be made, after careful consideration and detailed engagement with stakeholders, to address identified risks relevant to identified regulatory objectives for a given sector; they should not simply be "mapped over" from regimes in other sectors. This kind of approach almost invariably leads to unintended consequences.

(73) Do you believe that key rules similar to those applicable to MiFID trading venues should also apply to spot energy exchanges, and why?   **If so, could you please make specific reference to those? Where possible, could you please estimate a possible cost for spot energy trading venues that would have to comply with those new requirements.**
CMCE answer
We do not support the application of MiFID-equivalent rules to spot energy exchanges. Such an approach would be disproportionate, costly, and unjustified in the absence of a clearly defined problem statement. Spot energy markets, particularly those trading wholesale energy products, are already subject to an extensive set

of regulatory obligations under REMIT, including provisions relating to market conduct, data reporting, and abuse detection. In many cases, they are also within the scope of the Market Abuse Regulation.

Imposing additional requirements akin to those under MiFID, such as order book transparency, transaction reporting, or capital requirements, would significantly increase the cost of compliance for spot venues, costs that would inevitably be passed on to market participants. This would reduce market efficiency, deter participation, and fragment liquidity. Before introducing such measures, there must be a demonstrable regulatory gap and a clear rationale supported by evidence that current frameworks are insufficient.

We stress the importance of regulatory coherence and caution against unnecessary layering of obligations across regimes with different purposes and risk profiles. Regulations should be made, after careful consideration and detailed engagement with stakeholders, to address identified risks relevant to identified regulatory objectives for a given sector; they should not simply be “mapped over” from regimes in other sectors.

(74) Do you believe that the application of rules similar to the ones included in MiFID to spot energy market participants could have helped preventing at least some atypical trading behaviours (e.g., lack of forward hedging, trading on weekends) during the energy crisis, and limited repercussions on derivative markets?
Please substantiate your response.

CMCE answer

We do not believe that the application of MiFID-style rules to spot energy market participants would have prevented atypical trading behaviour during the energy crisis. Spot energy exchanges are already subject to extensive regulatory oversight under REMIT, MAR, and relevant sectoral frameworks. These include actively-enforced rules on market integrity, insider trading, and abusive conduct.

Furthermore, since the energy crisis, the regulatory landscape has evolved significantly. The adoption of REMIT II introduced important changes aimed at improving transparency, enhancing enforcement powers, and fostering closer cooperation between national and EU-level supervisory bodies. These reforms are only now beginning to be implemented, and we believe it is essential to assess their effectiveness before considering additional regulatory measures.

The behaviours observed during the crisis, including trading patterns and hedging decisions, were driven by fundamental market conditions, such as supply shocks, price volatility, and uncertainty, not by a lack of regulatory obligations. Introducing MiFID-style rules would not have addressed these root causes and could instead add complexity without improving market outcomes.

(75) **The revised REMIT clarified that benchmarks used in wholesale energy products are captured by the market abuse-related provisions in that Regulation. Do you believe that this is sufficient to ensure the integrity of such benchmarks, and avoid risks of manipulation?**

If not, please explain whether you would see merit in establishing rules similar to those imposed on benchmarks used in financial instruments and financial products under Regulation (EU) 2016/1011, and why.

CMCE answer

Yes. We believe that the recent clarification in REMIT II, confirming that benchmarks used in wholesale energy products are within the scope of market abuse-related provisions, is sufficient to ensure their integrity and mitigate the risk of manipulation. These reforms have strengthened the oversight of benchmark formation in energy markets and provide regulators with enhanced tools to monitor and act upon abusive practices.

Given the breadth of the new provisions and the recent entry into force of REMIT II, sufficient time should be allowed for their implementation and evaluation before any further regulatory expansion is considered. Introducing an additional benchmark regime mirroring Regulation (EU) 2016/1011 would risk creating unnecessary duplication and administrative burden to no additional purpose. It would also create an anomalous position for ACER, as an LNG benchmark administrator, which would need to be regulated under such a regime or specifically exempted from it.

(76) **Do you agree that the current situation leads to a complex supervisory scenario between various national and sometimes regional supervisors which may slow down reactions in times of crisis?**

If so, can you point to any concrete examples? Furthermore:

a. **If you replied no, please explain why you believe the current supervisory structure should not be challenged.**
b. **If you replied yes, do you agree that a supervisory college structure would improve cooperation between supervisors of energy spot and derivative markets?**
c. **If you deem that a supervisory college structure would improve cooperation between energy spot and derivative markets, please describe how this structure should look and what its main roles and responsibilities should be. In particular, please explain whetheryou think that a supervisory college would make sense only for some contracts/products (e.g., products of Union-wide relevance) and, if so, which ones.**

If you deem that a supervisory college structure would *not* improve cooperation between energy spot and derivative markets, please describe how the cooperation between energy and

derivative markets regulators could be further enhanced. In particular, please explain whether you believe that enhanced cooperation in the energy sector could be achieved by including in the financial legislation similar provisions with those included in the revised REMIT that will allow for enhanced cooperation and information exchanges between regulators in the financial market and energy respectively in combination with the creation of a common database for financial and energy regulators?
CMCE answer
Given the natural interconnections between energy spot and financial markets, we believe enhanced cooperation and coordination between regulators could improve market transparency and supervision. Nonetheless, we do not see any evidence of how the current set up would have delayed reactions during a crisis. We acknowledge that the current supervisory landscape, comprising multiple national and EU-level authorities with overlapping responsibilities, can create complexity. The fragmentation of reporting obligations and data formats across different supervisory entities often leads to inefficiencies, making it more difficult for regulators to obtain a complete and timely picture of market activity. We believe the recent reforms introduced under REMIT II represent a major step forward in strengthening regulatory cooperation and information exchange. These changes, particularly those clarifying ACER's coordination role and enhancing data-sharing between national regulators, should first be implemented and assessed before introducing any new structural reforms. If a supervisory college structure were to be considered, it should be developed as a means of improving coordination between existing supervisory bodies, rather than creating a new layer of oversight or new obligations/reporting lines for market participants. Its role should be strictly limited to facilitating information exchange, aligning interpretations of market conduct rules, and supporting crisis coordination. It should not introduce new regulatory requirements or reporting obligations for market participants. The overarching priority should remain the effective implementation of REMIT II and the optimisation of existing coordination channels between financial and energy regulators.

(77) **The Benchmark Regulation (Regulation (EU) 2016/1011) sets the regulatory and supervisory regime for commodity benchmarks used in financial instruments or financial products. Those benchmarks usually at least partially refer to market dynamics in the underlying physical commodity market. Do you believe that, when it comes to energy benchmarks, there is adequate cooperation between energy markets supervisors and securities markets supervisors? If not, what would be the merits of enhancing supervisory cooperation in that area?**
CMCE answer

We consider this question to be primarily one for supervisors themselves to address. From the perspective of market participants, the regulatory and supervisory responsibilities over energy benchmarks should remain clearly delineated between financial and energy regulators, based on the nature and use of the benchmark in question.

Any efforts to enhance cooperation between supervisors, particularly those overseeing energy and financial markets, should focus on improving coordination and information sharing between authorities, not on introducing additional obligations for market participants. In this regard, the enhanced cooperation frameworks established under REMIT II, including provisions on data exchange and regulatory coordination, are expected to contribute positively to supervisory alignment.

We would caution against expanding the scope of the Benchmark Regulation (which has not been replicated in the US or Asia) or creating duplicative rules for energy benchmarks already covered under REMIT II. Instead, efforts should be directed toward ensuring the effective implementation of existing regulatory tools, fostering consistency in oversight practices, and maintaining a clear distinction between energy and financial market supervision to avoid regulatory overlap and unnecessary burden.

However, the Benchmark regulation has just been reviewed and approved. We would suggest that it is premature to review this again.