AGENDA

Meeting of the SMSC’s Consultative Working Group (CWG)

Date: 04 April 2014
Time: 09:00 – 12:00 CET
Location: ESMA, 103 Rue de Grenelle, 75007 Paris
Contact: Alberto.Garcia@xxxx.xxxxxx.xx; Carsten.Ostermann@esma.europa.eu; Nuno.casal@esma.europa.eu; Catherine.Sutcliffe@esma.europa.eu

1. Welcome and opening remarks by the Chair

2. Bond Market Transparency
   
   Discussion of Liquidity Analysis prepared by ESMA

3. Derivatives Markets Transparency
   
   Scope of MiFID II and Potential Solutions

4. Microstructural issues:
   
   a. Market-making Obligations: under Articles 17 and 51 MiFID II, firms performing market making strategies should enter into agreements with the trading venues where such strategies are pursued and trading venues should have a scheme to ensure that a sufficient number of firms participate in those agreements.

   Views from CWG members are welcome regarding the circumstances in which having those schemes in place would not be appropriate (i.e. cases where it could be considered that there are sufficient liquidity providers in a market segment).

   b. Fee structures: under Article 51 MiFID II, ESMA has to determine in which cases fee structures would create incentives for disorderly trading conditions or market abuse. Views from CWG members are welcome in relation to:

      a. Which types of fee structures could contribute to disorderly trading conditions; and
      b. How fee structures in relation to market making (e.g. reduced fees for market makers reaching certain requirements) and order-to-trade ratios (e.g. charg-
ing additional fees to members surpassing pre-determined OTRs) could contribute to the orderliness of the market.

5. Renewal of the CWG

6. AOB
AGENDA

Meeting of the SMSC’s Consultative Working Group (CWG)

Date: 12 June 2014
Time: 09:30 – 12:30 CET
Location: ESMA, 103 Rue de Grenelle, 75007 Paris

1. Welcome and opening remarks by the Chair

2. Non-equity transparency with a focus on the definition of a liquid market and pre- and post-trade rules for different asset classes (Sections 3.5-3.10 Discussion Paper (DP))

3. Systematic internalisation; definition and obligations (Sections 3.3-3.8 Consultation Paper (CP); Section 3.3 DP)

4. Market making strategies, agreements and schemes (Section 4.4 DP)

5. Tick sizes (Section 4.8 DP)

6. Access to benchmarks (Section 5.8 DP)

7. Renewal of the CWG

8. AOB
AGENDA

Market Data Reporting Working Group and Consultative Working Group meeting

Date / Time: 23 July, 13h-18h
Location: ESMA, 103 rue de Grenelle, 75007 Paris
         Edison entrance, 5th floor, Berlin and Rome meeting room
Contact: Olga.Petrenko@esma.europa.eu

1. Welcome/Introduction 13:00 – 13:20
2. Obligation to report transactions (DP pages 438 – 479) 13:20 – 15:00
   a. What constitutes a transaction and execution of a transaction
   b. Client identification
   c. The designation to identify short sales
   d. Reporting by branches
   e. Annex 8.1.1 Table of fields
3. Obligation to supply financial instrument data (DP pages 480 – 494) 15:00 – 15:30
   a. Reasons and frequency of updates
   b. Timelines for submitting information

Coffee break 15:30 – 16:00

4. Obligation to maintain records of orders (DP pages 496 – 515) 16:00 – 16:45
   a. The three approaches regarding the level of harmonisation
   b. Relevant data constituting characteristics of the order
5. Requirements to maintain records of orders for HFT (DP pages 516 – 519) 16:45 – 17:15
7. UTI construction and generation between two CPs 17:30 – 18:00
8. AOB
Date for the next meeting:

a. 8 October 2014, **13:00 – 18:00**, Paris – please note the change of timing to the afternoon session instead of previously announced morning session
AGENDA

Meeting of the Consultative Working Group of the Secondary Markets Standing Committee

Date: 10th September 2014
Time: 9:00 – 12:00 CET
Location: ESMA, 103 Rue de Grenelle, 75007 Paris
Contact: Nuno.Casal@esma.europa.eu; Carsten.Ostermann@esma.europa.eu; Cathe-xxxx.xxxxxxxxx@xxxx.xxxxxx.xx; Albexxx.xxxxxx@xxxx.xxxxxx.xx

No Items

1. Welcome and opening remarks by the Chair
2. Tour de table
3. Discussion on non-equity transparency:
   a. Definition of systematic internaliser,
   b. Definition of ‘liquid instruments’,
   c. Calibration of the large in scale and size-specific-to-the-instrument thresholds.
4. AOB
AGENDA

Market Data Reporting Working Group and Consultative Working Group meeting

Date / Time: 8 October, 13h-18h  
Location: ESMA, 103 rue de Grenelle, 75007 Paris  
            Edison entrance, 5th floor, Madrid and Rome meeting rooms  
Contact: [Contact information]

1. Introduction 13:00 – 13:20

2. EMIR related topics 13:20 – 15:00
   a. Mark to market value of the contract (Table 1 field 17)
   b. Underlying (Table 2 field 4)
   c. Data quality improvement

   Coffee break 15:00 – 15:30

3. MiFIR related topics 15:30 – 18:00
   a. Principal and Agent capacities
   b. Population of Counterparty and Client fields
   c. Validation of LEIs
   d. Identification of a group of aggregated orders
   e. Identification of order books
   f. Routing of order
   g. Strategy orders

4. AOB
AGENDA

MDRWG CWG

Date: 03 February 2015
Time: 11:00 – 18:00h
Location: ESMA, 103, rue de Grenelle, Paris
Edison entrance, 5th floor, Berlin, Madrid and Rome meeting rooms

1. Welcome/Introduction 11:00 – 11:15
2. EMIR Level 2 validations 11:15 – 12:30
   a. Dependencies between fields
   b. Timeline for the implementation
3. EMIR review of the reporting TS (Ref. ESMA/2014/1352) 12:30 – 14:00
   a. Clarifications
   b. Adaptions
      i. Underlying field
   c. Introductions
      i. Collateral reporting fields
      ii. Valuation reporting fields
      iii. Action types
   d. Strategies
   e. Timeline for implementation

Lunch break 14:00 – 15:00

4. MiFIR reporting TS (Ref. ESMA/2014/1570 Annex B Chapter 8 of the CP) 15:00 – 17:30
   a. New approach to reporting – would introduction of the buyer/seller fields pose reporting challenges?
b. The three trading capacities (p. 411) – are the three concepts sufficiently straightforward?

c. Execution/Transaction/Transmission (p. 412 – 416) – accuracy and clarity of the definition

d. Implementation challenges for the Client ID (p. 416 – 417 and 443 – 444)

e. Operational challenges for reporting the trading activity of non-EU branches

f. Instrument reference data fields (p. 452 – 463) – what further additions are needed to adequately describe complex instruments?

g. Clock synchronisation (p. 503 – 506)

i. What is the minimum divergence from UTC that trading venues and investment firms would be able to achieve? Please specify how the divergence is measured.

ii. Synchronisation of internal clocks within an entity

iii. Calibration of the accuracy requirements proposed in Table 1 Annex 1 of the draft RTS on clock synchronisation (p. 508 of Annex B of the MiFID II CP)

5. Future guidance on transaction reporting scenarios 17:30 – 17:45

6. AOB

Date for the next meeting:

a. 8 April, ESMA premises, Paris – 11:00 – 18:00

b. 16 September, ESMA premises, Paris – 11:00 – 18:00

c. 11 November, ESMA premises, Paris – 11:00 – 18:00
AGENDA

Meeting of the Consultative Working Group of the Secondary Markets Standing Committee

Date: 6 February 2015  
Time: 10:30 – 13:30 CET  
Location: ESMA, 103 Rue de Grenelle, 75007 Paris  
Contact: Carsten.Ostermann@esma.europa.eu; Catherine.Sutcliffe@esma.europa.eu; Alber-tro.Garcia@esma.europa.eu; xxxx.xxxxx@xxxx.xxxxxx.xx;

No Items

1. Welcome and opening remarks by the Chair

2. Tour de table

3. Discussion on non-equity transparency:
   a. Definition of 'liquid instruments'
   b. Calibration of the large in scale and size-specific-to-the-instrument thresholds

4. Access provisions:
   a. Criteria for assessing when a benchmark is new
   b. Grounds for denying access by a CCP or trading venue

5. Algorithmic trading:
   a. Market making
   b. Tick sizes
   c. Testing requirements

6. AOB
No. Items

1. Welcome

2. CSDR

A. Settlement discipline

Penalties

Many stakeholders raised the problem that penalties should be proportionate to liquidity and not disincen-
tive trading in small caps which are not available for borrowing. Our mandate imposes that penalties
should have a deterrent effect to cure the fail.

1. How to set a level of penalties with a deterrent effect for securities that are not available for borrowing?

Buy-in

Some stakeholders mentioned the fact that the buy-in should occur at trading level not at settlement level.
For transactions executed on a trading venue or via a CCP the standards already take this into account.

2. What should the role of the CSD be in a buy-in regime for OTC transactions? What should the process
be for ensuring that information reaches the trading members level and that buy-ins can be executed?

Monitoring of Settlement Fails and Record Keeping

Some stakeholders mentioned the need to further adapt the information required for the purpose of moni-
toring and reporting settlement fails, as well as for record keeping, by taking into account the ISO stand-
ards.

3. For the purposes of the system of monitoring settlement fails, should the following information also
be provided, if available in the settlement instructions:
B. CSD requirements

CSD Participations

In order to ensure the viability of CSDs, ESMA considers prohibiting participations that would lead to an unlimited liability of the CSD. For this purpose, guarantees can be admitted under the condition that they are fully capitalised.

5. What would be the impact of requiring the full capitalisation of CSD guarantees, for the CSDs and the guarantee beneficiaries? In particular, what are the risks of a CSD participating in financing vehicles issuing debt (e.g. subordinated perpetual securities) guaranteed by the CSD or a subsidiary or affiliated or sister company of that CSD?

CSD Investment Policy

ESMA does not consider that derivatives other than FX should be considered as highly liquid, with minimal credit and market risk – and those under certain circumstances. There was a call from stakeholders to allow CSDs to enter into interest rate swaps for hedging purposes.

6. What are the cases in which CSDs enter into IRS and the risks in allowing it? How could hedging be clearly defined in this context?

C. Internalised settlement

In order to provide a good overview of the scope and of the extent of internalised settlement, ESMA is considering that the reports on internalised settlement should cover the aggregated volume (by number of transfer orders) and value (EUR) of transfer orders settled by settlement internalisers outside a securities settlement, split by asset class, type of securities transactions, type of clients, and country where the securities have been issued.

7. What are your views on the proposed requirements mentioned above?
3. **MiFID/MiFIR**

A. **Indirect Clearing**

The MiFIR consultation paper introduces potential alternative requirements on indirect clearing for ETD compared to the requirements under EMIR for OTC derivatives. Respondents to the previous consultation with regard to ETD (MiFIR discussion paper) have flagged issues affecting the development of indirect clearing services for OTC derivatives. We believe it is important that the final requirements address the ability for indirect clearing services to be offered for both ETD and OTC derivatives.

8. What are your views on the proposed requirements with regards to both ETD and OTC derivatives? Within the mandate defined in EMIR and MiFIR, what would ensure the development of indirect clearing services for OTC derivatives?

B. **Straight Through Processing**

The MiFIR consultation paper introduces requirements for Trading venues, CCPs and Clearing Members to ensure the quick submission and acceptance for clearing of ETD and OTC derivatives. For OTC derivatives, there is a difference of treatment between OTC derivatives transactions subject to the clearing obligation and OTC derivatives transactions voluntarily cleared.

9. What are your views on the difference of treatment? Do you think the distinction should not be between mandatorily cleared and voluntarily cleared but instead between executed with the intent to clear, so with a cleared price, and executed without the intent to clear however submitted for clearing later on?

C. **Access to CCPs and Trading Venues**

The MiFIR consultation paper introduces requirements for CCPs regarding the non-discriminatory treatment in terms of how contracts traded on that trading venue are treated in terms of collateral requirements and netting of economically equivalent contracts and cross-margining with correlated contracts cleared by the same CCP.

10. What are your views on the approach that CCPs shall apply to economically equivalent contracts the same margin and collateral methodologies, netting process and portfolio margining approach, irrespective of where the contracts are executed, unless risk considerations would require specific changes to models and parameters to mitigate any uncovered risk?

4. **AOB**
AGENDA

Meeting of the Consultative Working Group of the Commodity Derivatives Task Force

Date: 26 February 2015
Time: 10:30 – 13:30 CET
Location: ESMA, 103 Rue de Grenelle, 75007 Paris
Contact: Carsten.Ostermann@esma.europa.eu; Catherine.Sutcliffe@esma.europa.eu;

No Items

1. Welcome and opening remarks by the Chair

2. Ancillary activity

   Presentation by Karl-Peter

   Comments by Tony Ricci
   - Definition of Economically Equivalent OTC contracts: how does ESMA envisage this working in practice with examples of what would be considered in and out. Further questions I have include:
     - Will ESMA/NCA be publishing a list?
     - Will there be an element of self regulation i.e. if a list is published it cannot be conclusive
     - How will the netting happen in practice? Have ESMA considered the situation whereby an EE OTC contract is used to offset a number of different listed contracts?
     - Third Country Exchanges – my understanding is that since these are not recognised as trading venues under MiFID II that they could be considered as OTC and therefore potentially included in the list of EE OTC? E.g. Nymex WTI is used as an offset for ICE Brent. The ability to treat third country exchange listed contracts in this way will be beneficial.

   a. Draft cost-benefit-analysis questionnaire

   b. Other comments

3. Position limits and position reporting

   - Deliverable supply: not be an appropriate factor in determining commodity derivatives position limits for non-spot month contracts
• Aggregation: urge ESMA to draw up a more exhaustive list of considerations that are to be taken into account for the purpose of establishing the need for aggregation of positions.

a. Draft cost-benefit-analysis questionnaire

b. Other comments

4. AOB
AGENDA

MDRWG+CWG

Date: 08 April 2015
Time: 11:00 – 17:00h
Location: ESMA, 103, rue de Grenelle, Paris
Edison entrance, 5th floor, Berlin, Madrid and Rome meeting rooms

No. Item

1. Welcome/introduction

2. Feedback on MiFIR transaction reporting business cases

3. Tour de table on other MiFIR implementation issues that need to be considered

4. AOB
AGENDA [Draft]

IPISC

Date: 10 April 2015
Time: 10:00 – 13:00
Location: ESMA – 103, rue de Grenelle, Paris
Contact: Salvatore.Gnoni@esma.europa.eu

1. MiFID II - Consultation paper on draft Guidelines on complex debt securities and structured deposits
2. Supervisory convergence - Identification of direction and possible topics for IPISC work
3. AOB.
   a. Tour de table on relevant trends for investors and possible topics requiring investor warning
AGENDA

Consultative Working Group for the Commodity Derivatives Task Force

Date: 21 May 2015
Time: 10:30 – 13:30
Place: ESMA premises, 103 Rue de Grenelle, Paris, 75007
Contact: secondary-markets-team@esma.europa.eu

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<tbody>
<tr>
<td>1. Welcome and opening remarks by the Chair</td>
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| 2. Ancillary Activity  
- Overview  
- Alternative measures for the capital employed test  
- Other comments |
| 3. Position limits and reporting  
- Overview  
- Application of position limits to 'exotic' and securitised commodity derivatives (please see next page)  
- Aggregation of positions across a group and funds  
- Other comments |
| 4. Future Meetings |
Application of position limits to ‘exotic’ and securitised derivatives

Background

1. The definition of “commodity derivative” under Article 4(1)(50) of MiFID II cross refers to the definition of “commodity derivative” under Article 2(1)(30) of MiFIR which states “commodity derivative means those financial instruments defined [under Article 4(1)(44)(c) of MiFID II]; which relate to a commodity or an underlying referred to in Section C(10) of Annex I [of MiFID II]; or in points (5), (6), (7) and (10) of Section C of Annex I thereto [of MiFID II].”

2. Article 4(1)(44)(c) of MiFID II defines transferable securities as instruments of payment, such as “any other securities giving the right to acquire or sell any such transferable securities or giving rise to a cash settlement determined by reference to transferable securities, currencies, interest rates or yields, commodities or other indices measures.” Thus MiFID II captures securities on commodity underlyings, such as exchange traded funds, within its definition of commodity derivative.

3. Broadly speaking, definition Annex I, Section C (5) relates to cash settled derivatives, definition (6) to physically settled derivatives traded on trading venues, definition (7) to physically settled derivatives traded outside trading venues and definition (10) to cash settled derivatives with what ESMA loosely called for these purposes more “exotic” underlyings such as climatic variables, freight rates or inflation rates or other.

4. Feedback to ESMA’s consultation paper broadly supported basing the spot month limits on deliverable supply and the other months limits on open interest.

5. The CDTF would like to discuss with the CWG how the position limits regime might apply, and what would be the appropriate bases, for setting limits:

i. Securitised derivatives to which the concepts of open interest, deliverable supply and maturity do not apply; and

ii. Cash settled commodity derivatives with non-deliverable underlyings.
AGENDA

MDRWG+CWG

Date: 08 September 2015
Time: 13:00 – 17:15h
Location: ESMA, 103, rue de Grenelle, Paris
Edison entrance, -1 floor, Auditorium meeting room

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<td>13:00 – 13:10</td>
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<td>2</td>
<td>Feedback on MiFiR transaction reporting scenarios</td>
<td>13:10 – 15:30</td>
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<td>Break 15.30 – 15.45</td>
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<td>Feedback on MiFiR transaction reporting scenarios</td>
<td>15:30 – 17:00</td>
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AGENDA [Draft]

IPISC CWG

Date: 15 October 2015
Time: 10:00 – 12:45
Location: ESMA, 103 Rue de Grenelle, Paris
     Versailles meeting room (1st floor)
Contact: salvatore.gnoni@esma.europa.eu
         matteo.rava@esma.europa.eu

1. Welcome
2. Tour de table – Introduction of CWG members
3. MiFID II – IPISC supervisory convergence work
4. MiFID II – Guidelines on knowledge and competence of staff
5. Exchange of views on potential issues arising from the sale of “bail-inable” financial instruments to investors.
6. AOB
AGENDA

Consultative Working Group for the Commodity Derivatives Task Force

| Date:     | 30 October 2015 |
| Time:     | 10:30 – 13:30   |
| Place:    | ESMA premises, 103 Rue de Grenelle, Paris, 75007 |
| Contact:  | secondary-markets-team@esma.europa.eu |

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<td>1. Welcome and opening remarks by the Chair</td>
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<td>2. Comments on the position limits and ancillary activity published by ESMA with a focus on identifying implementation issues</td>
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<tr>
<td>3. Position reporting – update on the remaining Level 2 standards and implementation issues</td>
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</table>
1. Welcome and opening remarks by the Chair

2. Discussions about a potential delay of MiFID II

3. Quick overview of the remaining Level 2 topics on the ESMA side and the way forward regarding the Level 2 package of September
   a. ITS package
   b. trading obligation for derivatives
   c. scope of the non-equity tape

4. Main issues regarding the implementation of MiFID II (ESMA tools, priorities of ESMA and any issues identified by CWG members)
   a. Transparency
      i. transitional calculations
      ii. processes for putting waivers in place
      iii. the systematic internaliser regime
   b. The OTF definition
   c. Non-discriminatory access to trading venues (regulated markets, MTFs and OTFs) (Presentation by [name])
d. Any other issues identified by CWG members
Summary of Conclusions

Task Force on Commodity Derivatives

1. Discussion with the consultative working group

2. (a) Position limits and position reporting regime

introduced the ESMA empowerments under the MiFID II position reporting and limits regime, focusing on the hedging exemption, what is meant by “economically equivalent”, aggregation and netting, and deliverable supply. The CWG made the following key points:
Hedging exemption:
- Agreement that the hedging definition in EMIR should be used as a basis for the hedging definition for position limits. It was noted, however, that even risk reducing positions could still have some relevance for position limits i.e. a firm could reduce its price risk (through hedging) but the size of its position could still put pressure on the delivery process.
- It is not clear how the hedging exemption would apply if a non-financial firm hedges its position with a financial firm.

Economically equivalent: views varied with the key points made being:
- “economically equivalent” should mean “substitutable”
- if the definition of what is “economically equivalent” determines on what basis a firm can net its position, the definition will be crucial as many firms do not offset their risk with similar contracts: this would imply a broader definition of what “economically equivalent” means but on the other side, it would mean that the position limits regime would have a wider scope
- tying an economically equivalent contract to a trading venue contract with one limit applying to both is not feasible.

Aggregation and netting
- Suggestion to look at the CFTC approach and aim for equivalency as much as possible

Deliverable supply
- there will be significant gaps regarding information on the level of deliverable supply as data is limited
- for spot months, consider warehouse stock levels: further down the curve, the amount of deliverable supply is larger
- consideration should be given to the US definition of “deliverable supply”
- oil markets are global, not regional, in comparison to energy when considering supply levels

(b) Further specification of financial instruments definitions in sections C6, 7 and C10

Carsten Ostermann (CO-ESMA) introduced the ESMA empowerments regarding further defining commodity derivatives under C6, C7 and C10.
- **Oil**: Limiting the scope of oil contracts which would not be subject to EMIR is a significant decision because of the costs of margining. Oil should be construed broadly: not limited to crude oil but include refined products; the FCA handbook has a definition of “oil” that has worked well;
- the commercial purposes test for C7, to be further defined under level 2, should include a specific reference to the agricultural markets (in the current level 2 it is limited to energy)
- CWG members voiced concern regarding what is meant by “physically settled forwards” given that if regarded as a financial instrument they will count towards the EMIR clearing threshold.

(c) Notion of “ancillary activity”
Birgit Ortkemper (BaFIN) gave an explanation of the ancillary activity exemption and its interaction with other MiFID II exemptions. The CWG were mindful of the implications should firms fall into scope and noted further reflection was required.

(d) Renewal of the CWG
The Chair informed the group that the CWG had been in place for 2 years: under the terms of reference, ESMA was now obliged to issue a new, public call for candidates. However, he noted the CDTF would welcome the current members reapplying to sit on the CWG and thanked them for their contributions and work over the last 2 years.
It was agreed to hold a further CDTF meeting on 14 April, in Paris.

Catherine Sutcliffe (CS-ESMA) informed the CDTF that the European Commission had responded to ESMA’s letter stating the importance of providing further clarification on what is meant by physically settled forwards and FX forwards. The Commission has asked ESMA to draft guidelines for the former and will itself prepare standards for the latter.

Future Meetings

- 30 April, London
- 11 June (with CWG), Paris
- 23 July, London
- 4 September (with CWG), Paris
Summary of Conclusions

Standing Committee on Secondary Markets

Date: 4 April 2014
Time: 9h00-17h00
Location: ESMA's premises, 103 Rue de Grenelle, Paris
Contact: Carsten.Ostermann@esma.europa.eu
Nuno.Casal@esma.europa.eu
Catherine.Sutcliffe@esma.europa.eu
Alberto.Garcia@esma.europa.eu

<p>| Attendance | | Attendance |
|-----------|----------------|
| 1 David Lawton | Chair (FCA) | | |
| 2 Tim Rowe | FCA | | |
| 3 Edina Farkas | Central Bank of Hungary | | |
| 4 Isabelle Julie Schmit | CSSF | | |
| 5 An De Pauw | FSMA | | |
| 6 Hans Wolters | AFM | | |
| 7 Andrea Lackova | NBSK | | |
| 8 Bryan Friel | CBI | | |
| 9 Philippe Guillot | AMF | | |</p>
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<tr>
<td>1</td>
<td>Sonia Cattarinussi</td>
<td>AMF</td>
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<td>Philippe Guilhot</td>
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<td>Juergen Oberfrank</td>
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<td>Raoul Jacobs</td>
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<td>Rodrigo Buenaventura</td>
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<td>Carsten Ostermann</td>
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<td>Alberto Garcia</td>
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<td>Catherine Sutcliffe</td>
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<td>12</td>
<td>Benjamin Burlat</td>
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<td>13</td>
<td>Jan Axelsson</td>
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<td>14</td>
<td>Raúl Navarro Lozano</td>
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<td>Maria Joao Teixeira</td>
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<td>Valerie Ledure</td>
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<td>Manolis Arvanitis</td>
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<td>18</td>
<td>Romet Tepper</td>
<td>Estonian FSA</td>
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1. Meeting with the CWG

presented the results of the bond liquidity analysis exercise to the CWG for comment. Comments included noting that the analysis is based on the market pre-regulatory change and the market may well be different post-regulatory change, data from MTFs and other platforms should be included, that ESMA should discuss with the Debt Management Agencies about how the market works. In summary the main points from CWG-members were: query whether the regulation aims to bring more transparency to illiquid bonds or to encourage liquidity and the data covers ex ante type of liquidity and at some stage should take into account that a change of the regulatory structure may bring changes to the market.

presented a table setting out the a proposed way in which derivatives could be split into sub-asset classes (for the purposes of applying transparency and liquidity thresholds) and sought views on whether this was an appropriate starting place. Broadly, the CWG agreed with the the proposed categorisation.

2. Adoption of the agenda

The agenda was adopted.

3. Summary of Conclusions of the March meeting

The Summary of Conclusions of the March meeting was approved after an amendment suggested by Raul Navarro (RN-CNMV).

4. Main conclusions from the discussion with the CWG

The discussion with the CWG suggested that the ESMA analysis regarding bond market transparency was complete, there being , however, a need to include an explanation of the differences between MiFID and the CRR regulatory aims and perspectives.

The Chair (David Lawton - FCA) noted that the paper should properly state the policy goals of the transparency regime for bonds, i.e., enhancing transparency for liquid bonds and liquidity of the broader market and the difference between pre-trade and post-trade transparency criteria. Rodrigo Buenaventura (RB-ESMA) made the point that the quality of data on the issuance size suffers from data quality issues.

Regarding the design of the transparency calibration mechanism, the Chair pointed out the need for it to be easy to run and Valerie Ledure, (VL-European Commission) the need for it to effectively increase transparency.

The Chair further summarised the discussion with the CWG on the following questions: (i) identification of the policy goal (i.e., bringing transparency to small illiquid bonds or to the broader market?); (ii) identification regarding what is our degree of ambition (i.e., what proportion of bonds and volume should be captured); and (iii) does the use of different criteria lead to a different selection of bonds? If the selected universe varies considerably when different criteria are applied, we may need to revisit the chosen criteria.

Alberto Garcia (ESMA), on behalf of the coordinator of the MSI task force, summarised the main points of the discussion at the CWG. The main points raised were in relation to a potential con-
4.

The contradiction between the market making obligations under Articles 17 and 50 MiFID and banking regulation, favouring a principle-based approach developed by the trading venues and the need for clarity in Level 1 regarding what is to be achieved by these provisions.

The discussion afterwards underlined the need to clarify as much as possible in the Discussion Paper the regulatory goal to be achieved by ESMA's regulatory technical standards.

5.

Planning: timeline for consultations

Catherine Sutcliffe (CS-ESMA) explained the slide illustrating the timeline. Raoul Jakobs (RJ-BaFIN) argued for a longer consultation period in view of the magnitude of the task. The Chair noted that enlarging the consultation period from 2 to 3 months would mean extending the consultation period over the month of August which would not be extremely beneficial for the respondents and would severely impact ESMA timelines.

6.

Task Force on Transparency and Trading Obligation for Derivatives

Hans Wolters (HW-AFM), as coordinator of the Task Force on Transparency and Trading Obligation for Derivatives reported to the SMSC on the TTF's progress. In particular, HW-AFM noted ESMA staff was in the process of preparing a 'battle plan' regarding collection of analysis and data for derivatives;

The following TTF papers were presented for comment to the SMSC:

- CP definition SI equity/non-equity: The Chair asked the TTF to (i) consider further the proposal regarding how frequently an investment firm should calculate whether it is in or out of the SI regime and (ii) to include in the paper tentative figures for thresholds for non-equity SIs, given this will only be subject to one round of consultation.

- DP pre-post-trade equity: Some members raised concerns regarding the inclusion of pre-trade LIS thresholds in the DP and preferred that the DP consulted on the proposed new ADT classes only and asked an open question on where to set the thresholds.

- SI equity DP: The SMSC requested that some rationale be included in the DP for the three options proposed regarding standard market size as two of the options did not, on the surface, seem to fit with the analysis included in the paper.

- Trading obligation for shares: The SMSC discussed the list of proposed trade types which would not be subject to the trading obligation, with a request to clarify that the list will be exhaustive.

The Chair concluded that the SMSC is broadly happy with the four drafts and asked HW-AFM to submit the drafts again for the 'fa'tal flaw' comments at the next SMSC.

7.

Task Force on Organisational requirements for Trading Venues

Carsten Ostermann (CO-ESMA) as coordinator of the Task Force gave an update on progress to the SMSC.

The Chair proposed a way forward regarding the substantial importance of a trading venue in a host member state: the ITS to be developed by ESMA would cover the cases given as examples in the MiFID II recitals, noting them as examples and mentioning that the ITS would not change the scope of Level 1. The matter would be dealt with only in the Consultation Paper (i.e., would not be included in the Discussion Paper). The SMSC agreed to this proposal.
Micro-structural issues

Alberto Garcia, on behalf of the coordinator of the task force, informed the SMSC about the confirmed intention of the European Commission to request technical advice regarding the definitions of high frequency trading and direct electronic access. He also informed the SMSC that, following the meeting held on 20 March, the task force planned to have a round of written comments to the latest versions of the documents followed by a conference call. On that basis, his expectation was to circulate the final version of both documents to the SMSC for approval by 16 April.

Task Force on Data Publication and Access

Tim Rowe, coordinator of the Task Force on Data Publication and Access, gave a report on the activity of the TF over the last month. The TF had met on 19 March in Amsterdam and would meet again on 9 April in Paris with the intention of closing the papers on Access to Benchmarks, and the scope of the consolidated tape. The CRR empowerment (specification of main indices) is to be tackled immediately afterwards, with a view to submitting the DP to the June SMSC.

AOB

The Chair shared with the SMSC that 28-29 April SMSC meeting was principally to discuss fatal flaws comments.

Future Meetings

- 28-29 April, London
- 17 July, London
- 10 September (with CWG), Paris
- 16 October, London
- 21 November (with CWG), Paris
Summary of Conclusions

Task Force on Commodity Derivatives

Date: 4 and 5 September 2014
Time: 10.30 to 17.00 and 09.00 to 16.30
Location: ESMA Offices, Paris
Contact: Carsten.Ostermann@esma.europa.eu

1. Meeting with CWG
The CDTF met with its new CWG in the morning of 4 September. The CWG after an initial Tour de Table engaged in a lively discussion on position limits and reporting, the financial instruments definition and ancillary activity after initial introductions by the main drafters

The main points of note were the following:

Position limits
CWG members supported a CFTC style approach on economically equivalent contracts and considered that as much harmonisation as possible between Europe and the US were best for the industry. Members
also checked if it was possible under the Level 1 text to just focus on certain contracts which was confirmed as unavailable by the CDTF.

**Position reporting**
CWG members were concerned about the feasibility of the approach taken in Level 1 and supported using trade repositories as a central body at the centre of a position reporting regime. They also agreed that passing client details up a chain of firms poses a problem and that this must not be done by using plain text, including uncoded details of clients. Members also flagged nominee accounts and privacy laws in countries such as Singapore and Switzerland as issues.

**Financial instruments definition C6**
Members from utilities and trading venues had a discussion from opposing points of view about the scope of the C6 exemption and how it should be handled on Level 2 which replicated the stances known from the consultation responses.

**Ancillary activity**
Members agreed on the use of accounting capital but asked ESMA to issue guidance on how exactly this should be applied. Members were also concerned about freight as a separate category as it is a very small asset class and a large market share there (which would be small in relative terms) may lead firms to be caught unjustifiably.

The CDTF discussed the relevant responses received in respect of the ancillary activity test. Main conclusions drawn are that capital employed should be calculated based on the Accounting Directives, that the test should be applied by dividing the ancillary activity in the EU by the worldwide group activity, to further think about a de minimis threshold, that a centralised calculation and publication of the overall market trading activity in each asset class is necessary and to settle the final thresholds at a later stage. A small drafting group consisting of BO-BaFin, José Luis Pablos, Stefan Punkl and Jasper Jorritsma shall take this topic to the Consultation Paper stage. ESMA staff will distribute the template to be used.

10. Position limits and reporting – summary of responses

The CDTF went through the summaries of responses to a large number of questions. The views here were not that controversial and a drafting group led by UK-FCA and including Vincent Derbali, Adrianna Fabijanska, Knut Godager, Luca Amadei, Stefan Punkl and Ulle Jakobsen (the CDTF Members drafting the various summaries) will move this to the Consultation Paper stage (ESMA staff to supply the template).

11. ESMA position management powers – summary of responses

The topic was postponed to give ESMA staff a chance to reacquaint themselves with the topic and present the technical advice in the next meeting for approval.

12. Future Meetings

- 9 October, London
- 13 November, Paris (with the CWG and with potentially extending the meeting to the 14th)
Summary of Conclusions

Task Force on Commodity Derivatives

Date: 12 and 13 November 2014
Time: 10.30 to 18.00 and 09.00 to 16.30
Location: ESMA Offices, Paris
Contact: C. Sutcliffe@esma.europa.eu, C. Ostermann@esma.europa.eu

1. Meeting with CWG
The CDTF met with its consultative working group (CWG) on the morning of 12 November. The CWG discussed the financial instruments definition for C6, position limits and reporting, and the scope of ancillary activities after initial introductions by the main drafters Carsten Ostermann - CO - ESMA, Paul Willis - PW - FCA, and Birgit Ortkemper - BO - BaFin. The CWG had also been issued with short summary papers and questions in advance for the financial instruments definition for C6 and ancillary activity sections. The main points of note were the following:
Financial instruments definition C6
As has been the case throughout discussions on this topic, members from utilities and trading venues had opposing points of view about the scope of the C6 exemption. (KS - Polish Power Exchange) gave a short presentation arguing that EMIR in combination with the C6 carve out would incentivise trading away from trading venues and that the chain ratios of trading demonstrate that determining what is non-operational netting will be challenging. Others disagreed, arguing that chain ratios indicate liquidity and trading would not necessarily move off venue. There was no consensus on how to define C6 with key points raised being:
- Everything nominated to a TSO should be considered ‘must be physically settled’.
- Speculation could be equated with the chain ratio but this ignores the fact of the unpredictability of consumption where balancing is required the more or less is consumed.
- Ownership of resource is less important in the determination of ‘must be physically settled’ than what is stated in the contract.

(A-LP - Coop de France) raised the concern that all physical forwards would be within MiFID’s scope for agriculture as the spot market is small and the carve-out is for energy products only. She proposed a wider definition of ‘commercial purposes’ at Level 2 to avoid this issue arising.

Position limits and reporting
The CWG was particularly interested in the relationship between risk reducing positions (which will not count for NFCs towards the position limits) and the definition of economically equivalent as the wider this latter definition, the greater the scope for netting down the position and thus not meeting the position limit. However, on the other hand, a wide definition of economically equivalent would mean larger classes with one set of limits and therefore less liquidity. CWG members queried what regulators would consider a risk reducing position and how they would be expected to evidence such.

clarified that the limits would apply intraday, not end of day and a number of members expressed concern e.g. a clearing bank would not have the full view of a client’s position. asked for views on how the criterion of volatility should be taken into account. The general view was that limits could create volatility and that volatility should be considered as a consequence of limits rather than an input factor.

Ancillary activity
Members agreed on the use of the definition of capital from the Accounting Directive and noted that the simpler the better for defining and calculating what is ancillary to the main business. There was general agreement that regarding obtaining data it was practical, in calculating the size of trading activity (test 2) to limit the scope to EU activities, but noted this would be difficult for global markets (e.g. oil). The members supported having a de minimis threshold and suggested this should be one absolute figure, rather than a percentage, for simplicity.
The rules should not interfere with the existing regulatory microstructure of the energy market.

In summary, some members favoured an approach whereby an ex ante determination is made by (1) looking at the contractual terms to see if the commodity must be physically settled and (2) if the contract ensures both parties to the contract can make/take physically settlement at expiry.

Some members were undecided. The Chair also noted that ESMA should consult with ACER on such a significant change. The following next steps were agreed:

- CO-ESMA would recirculate a draft early next week and organise a conference call with ACER which other CDTF members were welcome to join;
- Members must revert with their preferred approach on netting and provide an alternative approach if they disagree by the end of next week.

6. Position limits and reporting – summary of responses

Risk reducing positions:
The CDTF agreed with the proposals in this section of the paper.

Non-financial entity definition:
The CDTF noted that because its proposal is that firms must aggregate on a whole position basis (i.e. although a firm may own a percentage of another firm it cannot pro rata the position held by that firm according to the percentage of its holding), this approach could lead to double counting. It was agreed to add in commentary in the CP.

Catherine Sutcliffe (CS-ESMA) agreed to follow up with colleagues to find out how or if EMIR defines non-financial entities which are third parties.

Economically equivalent definition:
Following feedback from the CP, ESMA will follow the CFTC approach regarding the definition of economically equivalent (reference to the exchange traded contract).

The CDTF noted economically equivalent contracts need to be on the list of contracts ESMA will publish but that currently, it is not clear who declares a contract is economically equivalent or what the process will be and this needs to be added to the CP.

The CDTF discussed how contracts in third countries that might be economically equivalent to an EU exchange traded contract would be treated e.g. could WTI Chicago and WTI London be netted? and if the WTI Chicago contract was traded on a RM recognised as ‘equivalent’ to an EU RM would that address the issue?

Same contract definition:
A contract which is the ‘same’ will be defined as such where identical contracts, e.g. if a venue licenses its contract to be traded on another venue (ICE has done this for NYMEX), are traded on two venues and will be subject to the same limit:

Hedging exemption notification process:
The CDTF noted that it would be very onerous to establish a contract by contract pre-approval process and that the text allows flexibility. Under EMIR there is a one off notification if an NFC intends to use the hedging exemption, therefore, it was agreed the MiFID II process should mirror this approach. However, supervision would be on a position by position basis.

Position reporting thresholds:
The CDTF agreed the following changes to the paper:

- Include in the CP the rationale regarding the reason for choosing the proposed levels.
- Add into the position report format whether the spot month or all month is being reported.
- Amend the format of the COTS report so that it is split between risk reducing and other positions.
In the preamble of the CP, note ESMA has no mandate to specify the position reporting format for trading venues but considers it is in the broader interest that everyone uses the same format.

Include in the CP the suggestion that investment firms report their ETD positions to trading venues rather than to the NCA, otherwise, ETD positions will be reported to the NCA’s via both TVs and Investment firms.

Include in the CP that ESMA is aware there are a number of other implementing issues to address following the drafting of the RTS.

PW-FCA would check with MDRWG on the identifiers proposed in the CP.

Timing of weekly (COTS) position reports CO-ESMA noted this requirement is an ITS and therefore, will be drafted and consulted on later, following discussion with ESMA IT staff.

7. Ancillary activity
The CDTF agreed the calculation for Test 1 (capital used by firm for MiFID II business) would be: the capital used for MiFID II activity at group level in the EU divided by the capital used for business at group level globally. The CP would propose a threshold of 5%, above which a firm would need to be authorised under MiFID. It was also agreed to ask a question in the CP regarding how the capital used in a MiFID II authorised entity of a group should be treated.

CS-ESMA would look into how this issue is addressed under EMIR.

The CDTF agreed the calculation for Test 2 (size of trading activity) would be: size of trading activity of group in EU compared to the size of trading activity in the EU market per commodity class. The CP would propose a threshold of 0.5% above which a firm would need to be authorised under MiFID and the threshold would be the same for each asset class.

It was agreed that if a firm passes either Test 1 or Test 2 only, it will be required to become authorised under MiFID.

The CDTF also agreed to propose a de minimis threshold of EUR 1 million gross notional per annum. If a firm is below this threshold it will not be required to do the calculations for the two tests or report annually to the NCA that it is using this exemption.

SA-EC noted he was not sure this was permitted under the Level 1 text.

CS-ESMA stated it is not clear to which NCA a firm not incorporated in the EU would report that it is using the exemption and would ask what is done under EMIR?

8. AOB
No other business.

9. Future Meetings

- It was agreed that drafters would circulate revised papers early next week and CDTF members could provide fatal flaw written comments only by end of next week.
- ESMA staff would arrange a conference call to discuss any remaining issues on basis of written comments on circulated papers.
- CS-ESMA noted he had circulated a paper with dates for the CDTF in 2015.
Summary of Conclusions

Task Force on Commodity Derivatives

Date: 26 February 2015
Time: 10.30 to 17.00
Location: ESMA Offices, Paris
Contact:

Attendees - CWG

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<thead>
<tr>
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<th>Organisation</th>
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Meeting with CDTF CWG

ESMA provided the CDTF CWG with four draft cost-benefit-analysis (CBA) questionnaires (one for firms and one for trading venues on each of ancillary activity and position limits) and asked for comments regarding the structure and questions. CWG members had very few comments on these apart from noting the difficulty in sizing the deliverable supply and querying the accuracy of the data which would ultimately be returned to ESMA for the CBA.

[...] in collaboration with [name] and [name], gave a presentation on the potential impacts of energy firms being required to become authorised under MiFID II due to the narrowing of the ancillary activity exemption. The key points propounded were:
- The two thresholds proposed by ESMA of 5% and 0.5% render the exemption effectively useless;
- The combined impact of having to be authorised under MiFID II and meeting as yet unknown capital requirements under CRD4 will decrease firms’ capital further with the consequence that there will be less liquidity, trading will move to bilateral agreements and bid-ask spreads will widen;
- They estimate that the consequence will be to increase the energy bill by EUR 20 per household; and
- Instead, they proposed that a firm must exceed both thresholds (rather than just one) before being subject to MiFID II and that the thresholds should be raised substantially to 20% for capital employed and 15% for trading activity. Further they argued that volumes traded and cleared on Regulated Markets in commodity derivatives should not be fully counted in calculating ancillary activities of a non-financial firm due to there being less risk in these transactions.

The other members of the CWG representing commodity firms also raised concerns about the exemption, in particular, that the hedging exemption is too narrowly framed. They also commented that they believed that it would take approximately two years to become authorised given the need to review and build IT systems to collect and analyse data and the lengthy, complex process involved; hence starting as a regulated firm on 3 January 2017 as required under MiFID II was not feasible.

Representatives of financial firms highlighted the need for clarity about, and a wide interpretation of, what is an economically equivalent OTC contract given they cannot benefit from the hedging exemption.

The CWG joined the CDTF for lunch then departed. The afternoon session of the meeting was of the CDTF alone.
Guidelines on C6 and C7 under MiFID I

Following the close of the consultation and amendment of the guidelines accordingly, the CDTF agreed to submit the guidelines to the March Board of Supervisors for approval.

Update on AMF work regarding French position limits regime for agricultural sector

Vincent Derbali provided an overview of recent AMF work regarding a new French position limits regime for the agricultural sector.

- Putting in place a legal framework for position limits was first discussed in France in 2013 to anticipate MiFID II and MAR;
- AMF rules are codifying, in a regulatory framework, the existing exchange and CCP position limits so in practice there are no changes to existing position limit levels but they give the AMF enforcement powers in addition to those of the trading venue;
- The rules are not as granular as they will be under MiFID II as they do not reach down to the end client.

Position limits and reporting and ancillary activity CBAs:

Members acknowledged the challenge of this exercise but raised concern regarding the size of the questionnaires and whether it would be possible to narrow down some of the options in the questions e.g. specify what type of proxies firms could use in calculating the ancillary activity threshold for capital employed if they could not use accounting capital. ESMA staff agreed to try to further refine the questionnaires and asked for CDTF members to send any further comments they had by end of the week.

Next steps:
The Chair noted that the CDTF’s immediate focus would be on finalising the RTS by 3 July 2015 and it was agreed that the ITS (on position reporting) would be put on hold and finalised in the second half of the year. The CDTF also agreed that in summarising the responses to the consultation paper questions (which would close on 2 March) members should note:

- Issues which relate to finalising the RTS;
- Issues which do not require finalising before the RTS but do need answering before the start date;
- Issues relating to national implementation where there may be benefit in NCAs discussing together how they take forward certain issues.

Implementation Issues

Catherine Sutcliffe informed the CDTF that ESMA’s IT group had started to look at how it would build the system to handle the weekly position report (i.e. where trading venues must send to ESMA the weekly report of aggregated information and ESMA must publish it).

AOB

No other business.

Future Meetings

- 25 March 2015, FCA London
- 22 April 2015,  ESMA Paris
- 21-22 May 2015 (currently a meeting with the CWG is planned but that plan may have to be revised, ESMA Paris)
### Task Force on Commodity Derivatives

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<tr>
<td>Time:</td>
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<tr>
<td>Location:</td>
<td>ESMA Offices, Paris</td>
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<tr>
<td>Contact:</td>
<td><a href="mailto:Carsten.Ostermann@esma.europa.eu">Carsten.Ostermann@esma.europa.eu</a>,  <a href="mailto:Nuno.Casal@esma.europa.eu">Nuno.Casal@esma.europa.eu</a>, <a href="mailto:Montserrat.Farina@esma.europa.eu">Montserrat.Farina@esma.europa.eu</a></td>
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### Summary of Conclusions

1. **Adoption of the agenda**
   
   The new CDTF Chair Edwin Schooling Latter (FCA) introduced himself and the agenda. The agenda was adopted.

2. **Supervisory convergence work program 2016**
   
   Anne-Laurence Semik from the ESMA Supervisory Convergence Unit made a presentation on EMA’s supervisory convergence work.
4. Reflections on the meeting with the CWG (main points raised)

presented a paper which posed several questions on the practical implementation issues of the ancillary activity tests. The main points raised were:

- **Main business test**: Should the numerator be the EU and the denominator worldwide trading? ESMA responded that the intention is for both to be consistent, so to have EU trading in the denominator as well.

- **Trading activity threshold test**: In the denominator the RTS makes reference to ‘financial instruments’, does that include all financial instruments or just commodity derivatives? CO-ESMA responded that the intention is to include only commodity derivatives as per the Level 1 text which deals with other financial instruments under a different exemption.

- **Counting activity in licensed entities in the denominator**: It was proposed to extend the scope of the denominator so that it would include trading conducted in licensed entities. CO-ESMA noted that the original intention was not to consider trading in licensed entities anywhere.

- **How to compute GNV? Should it follow EMIR?** Yes.

- **Does compliance with the limits need to be maintained at ‘all times’?** Yes

- **Application timeline** – NCAs are expected to start having a dialogue with firms that could be captured by MiFID II and provide direction on whether they would need to be regulated, this could start already as of April 2016.

- **Publication of market size**: ESMA could publish data only after the end of the observation period, i.e. after 30 June 2016.

presented a paper on transparency of EFPs. The Chair indicated we are aware of the issue, however, it requires a change to Level 1 which ESMA has made the Commission aware of in its covering letter to the technical standards package.

distributed a document detailing the main issues identified with the RTS on position reporting. Main points made were:

1. Market participants are not equipped to report positions this way
2. There is a problem with the categorisation of non-EU entities and their positions
3. There is a risk of inconsistency across trading venues
4. There is an unclear relation between the hedging definition in RTS 21 and CoT category of ‘risk reducing positions’
5. The CoT position reporting for ‘previous calendar week’ is inaccurate. ICE proposed to publish a CoT on Monday for the Tuesday of the previous week
6. Detailed information is needed on: format of files and schemas, validations in place and available testing, connectivity, support and communication lines.

asked questions on the following: aggregation of open interest for other months, EEOTC contracts, do specs need to be identical? He stated that
it was not clear how group level aggregation would work for asset managers, a point that was supported by BlackRock, and which ESMA followed up by phone. They have requested clarity on aggregation of positions for their funds. ESMA indicated this will follow at Level 3.

In terms of the figure of open interest to be considered to apply the position limit for non spot months, it was indicated that it should be computed by adding the open interest of every outstanding contract that is not the spot month, and it should be reviewed at least annually.
A level 3 training, how the process will work (timeframes, inputs from NCAs, etc.) will be included in the agenda of the next meeting on 19 November, including what could be part of Q&A and Guidelines.

9. AOB

The Chair raised that CEER was interested in a meeting with ESMA and NCAs.

ESMA and several NCAs expressed interest in attending a meeting with the different energy regulators. It was requested to indicate what issues should be on the agenda as well as a date preference (Early/mid December tentatively).

10. Future meetings

Future meetings will be set by the new Chair of the CDTF. The next one scheduled is November 19, 2015 in London. A meeting with the CWG is expected for the first half of January 2016.