



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: [REDACTED]

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
Contact: [REDACTED]

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: [REDACTED]
[REDACTED] x

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**

6. Synchronisation of business clocks (DP pages 520 – 523) **17:15 – 17:30**

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: [REDACTED]

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:



1. Introduction	13:00 – 13:20
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2. EMIR related topics	13:20 – 15:00
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- a. Mark to market value of the contract (Table 1 field 17)
- b. Underlying (Table 2 field4)
- c. Data quality improvement

Coffee break 15:00 – 15:30

3. MiFIR related topics	15:30 – 18:00
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- 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: [REDACTED]

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

ANNOTATED AGENDA

Post-Trading Consultative Working Group

Date: 20 February 2015
Time: 09:30 – 12:00 (The meeting can end before 12:00)
Location: ESMA, 103 rue de Grenelle, 75007 Paris – Room Berlin + Rome (Floor 5)
Contacts: [REDACTED]

No. Items

1. Welcome

2. CSDR

A. Settlement discipline

Penalties

Many stakeholders raised the problem that penalties should be proportionate to liquidity and not disincentivise 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 monitoring and reporting settlement fails, as well as for record keeping, by taking into account the ISO standards.

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

- a) **Place of trading** (to be provided if the transaction has been concluded on a trading venue) - populated by the MIC (ISO Market Identification Code) (ISO 10383) if the instruction is resulting from a trade concluded on a trading venue or blank if the field in the settlement instruction does not contain a MIC or is not filled in;
- b) **Place of clearing** (to be provided if the transaction has been cleared by a CCP) - BIC (or converted LEI) of CCP if transaction is cleared by a CCP or blank if the field does not contain a valid BIC or is not filled in?
4. As part of the settlement fails reports, should information also be provided on which types of securities accounts are connected to the fails (to see whether the fails are due to lack of securities of the CSD participant or of its clients)?

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: [REDACTED]

No Items

1. Welcome and opening remarks by the Chair
2. Ancillary activity

Presentation by [REDACTED]

Comments by [REDACTED]

- *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

- [REDACTED]
- *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: [REDACTED]

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

	Topic
1.	Welcome and opening remarks by the Chair
2.	Ancillary Activity <ul style="list-style-type: none">- Overview- Alternative measures for the capital employed test- Other comments
3.	Position limits and reporting <ul style="list-style-type: none">- 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.



European Securities and
Markets Authority

ESMA REGULAR USE

Date: 02 September 2015
ESMA/yyyy/xx/xxx

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

No	Item	
1.	Welcome/introduction	13:00 – 13:10
2.	Feedback on MiFiR transaction reporting scenarios	13:10 – 15:30
	<i>Break 15.30 – 15.45</i>	
3.	Feedback on MiFiR transaction reporting scenarios	15:30 – 17:00
4.	AOB	17:00 – 17:15

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: [REDACTED]
[REDACTED]

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

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

AGENDA

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

Date: 24 November 2015
Time: 09:30 – 12:30 CET
Location: ESMA, 103 Rue de Grenelle, 75007 Paris
Contact: secondary-markets-team@esma.europa.eu

No Items

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 [REDACTED])



- d. Any other issues identified by CWG members

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

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”

[REDACTED] 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.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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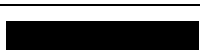







Summary of Conclusions

Standing Committee on Secondary Markets

Date: 4 April 2014
Time: 9h00-17h00
Location: ESMA's premises, 103 Rue de Grenelle, Paris
Contact: [REDACTED]
[REDACTED]

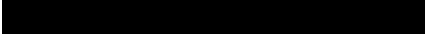
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1. Meeting with the CWG

 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.


















[REDACTED]

[REDACTED]

[REDACTED]

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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 unjustifiedly.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

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. [REDACTED] (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.

[REDACTED] (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.

[REDACTED] 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. [REDACTED] 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.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[illegible]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

2.	[REDACTED]	[REDACTED]	
3.	[REDACTED]	[REDACTED]	
4.	[REDACTED]	[REDACTED]	[REDACTED]
5.	[REDACTED]	[REDACTED]	
6.	[REDACTED]	[REDACTED]	
7.	[REDACTED]	[REDACTED]	
8.	[REDACTED]	[REDACTED]	
9.	[REDACTED]	[REDACTED]	
10.	[REDACTED]	[REDACTED]	
11.	[REDACTED]	[REDACTED]	
12.	[REDACTED]	[REDACTED]	
13.	[REDACTED]	[REDACTED]	
14.	[REDACTED]	[REDACTED]	
15.	[REDACTED]	[REDACTED]	
16.	[REDACTED]	[REDACTED]	
17.	[REDACTED]	[REDACTED] [REDACTED]	

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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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.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]