[redacted] **(FISMA)**

From: [redacted] (MARKT)
Sent: 11 July 2013 10:55
To: MARKT LIST G3
Subject: Benchmarks and MiFID meeting with the FOA

Maite Fabregas, Philip Tod, [redacted], [redacted] and [redacted] met the Forwards and Options Association CEO, [redacted], on 10th July 2013.

Whilst [redacted] expresses its support for the regulation of PRAs, the expressed his concern over the following aspects of the proposal:

- Need to calibrate the degree of regulation and requirements for different types of benchmarks
- Legal risks deriving from absolute standard, for example regarding requirements for administrators to ensure the authenticity of contributors' submissions or to minimise conflicts of interest. In such cases, reasonable steps taken by administrators could not be sufficient for defence in case of a breach
- Need to balance requirement in order not to disincentive contributors
- Benchmarks credibility and energy companies' concern

With regard to MiFID, he argued for the need to exempt physical forwards from the definition of financial instruments. The nature of the platform on which an instrument is traded is not the right basis to determine whether it is a financial instrument, and causes misalignment with the US. Contracts should be platform neutral. This is an issue already under MiFID today. It would be better to look at intention to physically settle. The terms of the contract, parties' ordinary dealings, their capacity to take delivery, and defined needs could serve as indicators. Market participants could use such factors to evidence their intention to physically settle a contract. In the UK the concern here is that many of the power markets are illiquid and they are trying to set up MM schemce to enhance the liquidity. Mifid registration requirements could stop this happening.

On position limits, the US revised approach is forthcoming but likely to be delayed. ICE in Europe currently adheres to US limits.

On EMIR implementation, there is concern that clearing houses will be recognised by ESMA in blocks to avoid first mover advantage. CCP's need to be able to offer asset segregation, but there are different models for doing this and some will not be able to offer it as of entry into application of the clearing obligation. Firms are having to disclose disclosure documents for clients, without knowing what the segregation model will be. It will therefore be very difficult to comply with the rules at entry into application.

On recognition, banks are to hold an extra capital charge when trading on non-EU CCP's. This is not the case in the US, which relies on IOSCO standards instead of recognition. This difference in capital requirements creates an unlevel playing field.