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COMMODITY DERIVATIVES MARKETS

EUROPEAN COMMISSION'S CONSULTATION

AMAFI's answer

AMAFI is the trade association representing financial markets' participants of the sell-side industry located in France. It has a wide and diverse membership of more than 170 global and local institutions notably investment firms, credit institutions, broker-dealers, exchanges and private banks. They operate in all market segments, such as equities, bonds and derivatives including commodities derivatives. AMAFI represents and supports its members at national, European and international levels, from the drafting of the legislation to its implementation. Through our work, we seek to promote a regulatory framework that enables the development of sound, efficient and competitive capital markets for the benefit of investors, businesses and the economy in general.

Commodity derivatives are essential for non-financial entities to hedge risks in energy, agriculture, and metal markets, playing a key role in EU economic stability. Since 2018, emission allowances (EUAs) have been treated in a comparable way under MiFID II. A comprehensive review[1] of these markets is underway, assessing notably position limits, the Ancillary Activity Exemption (AAE), and data reporting. The 2022 energy crisis and the resulting market volatility have already led to a series of reforms, including a strengthened REMIT framework to enhance transparency and market monitoring.

This consultation launched by the European Commission aims to gather stakeholders' feedback to assess the functioning of commodity derivatives markets, including certain aspects related to spot energy markets, with the following objectives:

- Informing the MiFID report to be submitted to the co-legislators as part of the review mentioned above with a view to making "*EU commodity derivatives markets more efficient, resilient*", and beneficial to "*the real economy*", while reducing unnecessary regulatory burdens.
- Providing evidence for "*broader reflections on the wholesale energy and related financial markets*", potentially guiding future policy initiatives.

The consultation covers issues including data reporting, the AAE, position limits, circuit breakers, and insights from the Draghi report on EU competitiveness.

[1] Article 90(5) of MiFID requires the Commission, after consulting ESMA, the European Banking Authority (EBA) and the Agency for the Cooperation of Energy Regulators (ACER), to present a report to the European Parliament and the Council with a comprehensive assessment of the markets for commodity derivatives

AMAFI welcomes the opportunity to respond to this consultation, which is highly relevant to the activities of many of its members active in commodity and energy markets. Before addressing the specific questions of the consultation, we would like to make the general comments set hereafter.

I. GENERAL COMMENTS

- The consultation should not aim at tightening regulation on commodity markets, as we consider that this is not where the core issues lie. Rather, it should be an opportunity to take a step back with the aim of (i) **fine-tuning mechanisms that have proven effective, particularly during the 2022 crisis, such as circuit breakers and the AAE exemption tests** (ii) **reducing regulatory burdens, including by removing duplicative requirements.** In this context, AMAFI **does not agree with the proposed systematic OTC position reporting to trading venues, as it would duplicate existing EMIR obligations.** Instead, we propose that this reporting be carried out on an ad hoc basis, upon request of the relevant authorities.
- **The current reporting framework** is overly complex, costly, and partially redundant. To address this, we recommend a three-step approach:

  - Short term: An immediate pause should be imposed on upcoming and ongoing reporting changes (such as REMIT II and MiFIR RTS 22).
  - Medium term: Regulators should focus on simplifying and streamlining reporting requirements, eliminating duplications and establishing a centralised data collection layer.
  - Long term: The objective should be to implement a unified “report once” framework, applicable across all reporting regimes.

- One important topic that appears to be missing from the scope of this consultation is the issue of **margin calculations and eligible collateral**. This topic had a significant impact on markets in 2022, contributing to a shift in trading activity from regulated markets to OTC venues—a trend that is particularly undesirable during periods of market stress, as it can impair price formation and reduce overall market liquidity.

  AMAFI believes that there is room for improvement in this area, in particular with regard to the following points:

  - **Recognition of public and private guarantees as eligible collateral**: while EMIR 3 provides for the possibility of using such guarantees, their acceptance is not always granted by clearing houses. Greater consistency in their recognition could ease collateral constraints for market participants, especially during periods of stress.
  - **Treatment of Standby Letters of Credit (SBLCs) under CRR:** SBLCs are accepted as collateral under EMIR but not treated the same under CRR, where they are considered "*unfunded credit protection*". While they can mitigate credit risk by substituting the risk weight of the debtor with that of the guarantor, they do not reduce the Exposure at Default (EAD) like cash collateral. A review of the CRR treatment of SBLCs should be considered.

- **Smoothing margin call spikes around expiry dates:** mechanisms should be considered to smooth these peaks, as they create operational strain. On this point, AMAFI welcomes the transparency requirement on the margin calculation (*EMIR 3, Art. 38*), but considers that there is room for improvement in the calculation logic.

Addressing these issues would help support market stability and reinforce the attractiveness of centrally cleared markets, in line with the broader objectives of the Capital Markets Union.

II. ANSWERS TO THE QUESTIONS

1 - DATA ASPECTS

Q1: *Do you believe that REMIT reporting, on the one hand, and MiFID/MiFIR/EMIR reporting, on the other hand, should be streamlined and/or more harmonised? If so, could you point to specific reporting items that need to be streamlined/aligned, and how? In particular, please explain whether the provision under REMIT which aims at avoiding double reporting for transactions already reported under the financial framework effectively allows to prevent double reporting and, if not, why.*

Please refer to our answer to Q2.

Q2: *Reporting under MiFID/MiFIR/EMIR, on the one hand, and REMIT, on the other hand, can vary in terms of format and transmission protocols. In your view, which reporting standards and protocols should be used as reference (REMIT or MiFID/MiFIR/EMIR) if formats and reporting protocols were to be made uniform? Please also provide, if possible, information on oneoff costs and longterm savings from such harmonisation.*

AMAFI supports the move towards a consolidated reporting framework but emphasises the need for a sequenced and coordinated approach. To this end, we propose a three-step approach:

- first, an immediate pause on both upcoming and ongoing reporting changes;
- second, in the medium term, a simplification and rationalisation of existing requirements, including the removal of duplications and the development of centralised data collection mechanisms;
- and third, in the longer term, the implementation of a unified “report once” framework across all reporting regimes.

As for the centralised data collection mechanisms, AMAFI advocates for a reporting system built upon the existing reporting frameworks, rather than on newly created obligations, to avoid any additional burden on market participants. Since market participants already report under REMIT, EMIR, and MiFID/MiFIR to the relevant authorities, efforts should focus on redirecting these existing flows to a central hub. This could serve as a pragmatic first step while broader simplification and streamlining efforts are developed—recognising that such work may take time to materialise.

Furthermore, we would like to emphasise that the commodities market is fundamentally different from other financial markets and is a strategically important area for the EU. This calls for sector-specific regulation, which requires in-depth, specialised knowledge. Therefore, greater coordination between financial and sectoral regulators (e.g. ESMA or NCAs and ACER) is crucial in particular with respect to reporting, as the current lack of coherence introduces unnecessary complexity. Improved regulatory cooperation could help eliminate redundant reporting requirements and enhance efficiency, aligning with the broader objectives of reducing costs and improving the overall coherence of the reporting system.

As regards reporting format and transmission protocols, they should remain as currently set in MiFID/MiFIR/EMIR and REMIT, with no changes to existing structures. It is also essential to ensure that competent authorities are able to handle all existing formats and protocols without forcing market participants to adapt their systems. Stabilising reporting requirements is crucial, as constant changes create unnecessary complexity and costs and hinder the quality and efficiency of reporting.

***Q3**: Do you believe that a centralised data collection mechanism for collecting data related to REMIT and MiFID/MiFIR/EMIR reporting would alleviate the current reporting burden on market participants? If so, how could it be alleviated and what level of possible cost savings could result from such exercise (order of magnitude), distinguishing one-off costs and recurring compliance costs (for instance, per year)? How would you structure such a possible centralised data collection mechanism (both in terms of data collection and dissemination/access) in a way that, on the one hand, would limit the costs of its set-up (i.e., using to the maximum the existing functionalities of trade repositories/RRMs) and, on the other hand, limit any possible one-off costs of adjustment for reporting entities?*

Please refer to our answer to Q2.

***Q4:** Do you believe that data sharing through the abovementioned centralised mechanism consolidating the data would improve supervision by NCAs, NRAs, ESMA and ACER? And if so – in which way?*

Please refer to our answer to Q2.

***Q5:** In the event that the centralised reporting mechanism is deemed an appropriate measure, by what entity should energy spot and derivatives markets data be consolidated? (please select the relevant items): a. by trade repositories? b. by RRMs? c. by a new type of entity in charge of consolidating data collected by trade repositories and RRMs? d. some other entity? Please specify. Please explain.*

As mentioned in its response to Q2, AMAFI emphasises the importance of using existing reporting channels to the fullest extent possible hence avoiding the introduction of additional obligations. This is essential to prevent any further increase in an already significant reporting burden faced by market participants.

***Q6:** Do you believe there is a better alternative to a central data collection mechanism for improving collection and sharing of data collected under REMIT and MiFID/MiFIR/EMIR? If so, could you please describe it?*

As mentioned in its response to Q2, AMAFI supports the idea of centralisation but emphasises that its implementation must be carefully planned and it requires thorough work, with the input of market participants, to ensure its effectiveness.

***Q7:** In the event that the centralised reporting mechanism is deemed inappropriate, should an alternative approach be considered whereby NCAs have systematic access to the ACER central REMIT database, and vice-versa?*

AMAFI considers that this question is primarily for the authorities to assess, as it depends on the specific objectives of each reporting framework. All relevant data are already reported under the existing regimes (EMIR, MiFIR/D, SFTR, REMIT), and any decision on cross-framework access should be based on clearly defined and operationally sound cooperation agreements between regulators. Regardless of the approach, it is essential to ensure that it does not generate additional costs or operational burdens for market participants.

That said, particular attention should be paid to data access and sovereignty, especially in the commodities sector, which is both strategically sensitive and cross-border by nature. For example, granting NCAs and ESMA access to ACER data could raise concerns in terms of oversight and control over critical market information, and any such initiative should therefore be carefully assessed in light of these risks.

Q8: *Do you believe that the rules on pre- and/or post-trade transparency (i.e., public dissemination of information on quotes and transactions) of commodity derivatives under MiFID/MiFIR should be amended, notably to include commodity derivatives traded on an MTF or an OTF? It is worth noting that making commodity derivatives subject to pre-trade transparency would imply that commodity derivatives would be included in the consolidated tape for OTC derivatives.*

If not, why? If so, under which conditions? Would you see any added value in introducing similar rules in REMIT aiming at pre and/or post-trade transparency and, if yes, under which conditions?

AMAFI does not support a broad extension of MiFID/MiFIR pre- and post-trade transparency requirements to commodity derivatives traded on MTFs and OTFs, for the following reasons:

- **Timing:** Given that post-trade transparency under MiFIR is currently being reformed — following ESMA's Final Report (December 2024) on transparency for bonds, structured finance products, and emission allowances, as well as the recent consultation on transparency for derivatives—it is essential that any broadening of the current reporting requirement for commodity derivatives be aligned with the forthcoming RTSl. A sufficient transition period should be provided to allow market participants to adapt their systems. Moreover, frequent regulatory changes should be avoided, as they impose significant costs and operational burdens on firms.
- **Scope:** In line with Article 8a(2) of MiFIR, only standardised and liquid commodity derivatives should be subject to pre- and post-trade transparency as per MiFIR. Expanding the scope beyond these instruments risks undermining market efficiency without delivering meaningful transparency benefits.

Q9: *Do you believe that the consolidated tape should include pre and/or posttrade data on exchange traded commodity derivatives (i.e. commodity derivatives traded on regulated markets)?*

If so, under which conditions (latency, transmission protocols, precise scope of products, etc.)?

N/A

***Q10**: The recent MiFIR review has extended reporting requirements for transactions in some OTC derivatives that are executed outside of a trading venue. This extension does not concern commodity derivatives. Do you believe that transactions in OTC commodity derivatives that are executed outside of a trading venue should be subject to systematic reporting to NCAs under MiFIR?*

If so, what would be the added value of such reporting compared to existing reporting requirements under EMIR and under REMIT? If not, why?

AMAFI does not support subjecting transactions in OTC commodity derivatives executed outside a trading venue to additional systematic reporting under MiFIR, as such transactions are already comprehensively covered under EMIR and REMIT. We strongly encourage regulators to make full use of the data already available through these frameworks, rather than introducing new reporting channels that would lead to unnecessary duplication and increased operational burden.

Additionally, introducing such a change would require amending Level 1 provisions, whereas MiFIR has only recently been revised: the RTS 2 on post-trade transparency is undergoing significant updates, including through ESMA's final report on non-equities and EUAs and a consultation on derivatives which is still ongoing. Further expanding MiFIR's scope before the current review process is concluded would be premature and risks undermining the coherence of the regulatory framework.

***Q11**: Do you believe ESMA has sufficient access to transaction data from trading venues and from market participants reported to NCAs?*

If not, please explain what are the consequences and how you believe this should be tackled.

AMAFI considers that this question is more appropriately addressed by ESMA itself, as it concerns the data it receives from trading venues and market participants through NCAs.

The priority should be to clarify the respective roles and objectives of the various authorities involved, and to determine what data is truly needed, for what purposes, and where it can be sourced. In that regard, it would be useful for ESMA to identify any data gaps it faces in fulfilling its mandate.

However, we would note that ESMA may not currently have the sector-specific expertise — such as grains or electricity — nor direct access to the relevant market participants in these sectors, which can limit its visibility on the needs and regulatory priorities of these sectors.

2 - ANCILLARY ACTIVITY EXEMPTION

***Q12**: The exception under Article 2(1), point (d), of MiFID sets out the conditions under which entities that deal on own account in financial instruments other than commodity derivatives are exempted from a MiFID license. In particular, this exemption does not require that this activity is ancillary to the entity's main business, unlike what is required for entities dealing on own account in commodity derivatives under point (j) of the same Article. However, the exemption under Article 2(1), point (d), is subject to different limitations. Do you believe persons dealing on own account in commodity derivatives should be treated the same way, with a view to benefit from a MiFID exemption, as persons dealing on own account in other financial instruments, in particular in not requiring that trading activities are ancillary to a main business?*

If yes, what would be the associated risks and benefits, in your view, of treating traders in commodity derivatives the same way as traders in other financial instruments who benefit from the exemption under Article 2(1), point (d) of MiFID?

In providing your explanation, please also clarify whether:

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

The Ancillary Activity Exemption (AAE), as defined in Article 2(1)(j) of MiFID, exempts certain non-financial market participants from the requirement to obtain MiFID authorisation when trading commodity derivatives on own account, provided that the activity is not related to the execution of client orders. This exemption is subject to three tests that determine the conditions under which the activity is considered to be ancillary.

AMAFI believes that the three tests as currently defined in Article 2(1)(j) are appropriate and should be maintained as they are at Level 1: each criterion accommodates different types of market participants with different profiles - such as agricultural cooperatives and smaller entities - allowing them to qualify for the AAE exemption by meeting at least one of the criteria. **Moving to a single criterion would be counterproductive, as it would exclude some existing participants and potentially push them towards OTC markets, ultimately undermining effective price formation and liquidity.**

***Q13:** Under Article 2(1), point j of MiFID, an entity can provide investment services other than dealing on own account in commodity derivatives or emission allowances or derivatives thereof to its customers or suppliers of its main business without a MiFID authorisation, provided that the provision of such investment services is ancillary to its main activity. Do you believe that this exemption as regards the provision of investment services to customers or suppliers is fit for purpose, and why? If not, how would you propose to amend this?*

Please refer to our answer to Q12.

***Q14:** Do you currently benefit from the AAE? If so, which part of the test is the most relevant for you/do you rely on? Did the CMRP make it easier for you to benefit from the AAE?*

Please refer to our answer to Q12.

***Q15:** More generally, how do you assess the impact of the CMRP amendments and their application by NCAs on your activity, if any? Could you provide estimates of any cost savings and clarify their sources?*

The changes introduced in 2021 by the Capital Markets Recovery Package (CMRP) have significantly reduced the administrative burden for firms and AMAFI strongly supports the preservation of these improvements.

More specifically, the removal of the systematic (annual) notification for the Ancillary Activity Exemption (AAE) to National Competent Authorities (NCA) has been a positive step. This notification process was complex, costly and time consuming (even if the associated costs are difficult to quantify precisely) especially given its limited added value.

***Q16**: What impact do you believe the alleviations brought to the AAE by the CMRP had on the liquidity and depth of EU commodities markets, if any? Could you provide any order of magnitude, for instance in terms of open interest, volumes, number and diversity of participants, bid/ask spreads, etc.?*

The alleviations introduced to the AAE through the CMRP can help attract new participants by lowering entry barriers, thereby enhancing market efficiency, strengthening the price formation and improving liquidity through greater involvement of physical players.

***Q17**: What is the most effective and efficient method to ensure that supervisors can monitor compliance with the requirements of the AAE? In particular, do you believe the abolishment of systematic (annual) notification from beneficiaries of the AAE to NCAs should be maintained or should these notifications be re-introduced? Please explain. Could you quantify costs if they were to be reintroduced?*

AMAFI considers that in order to ensure proper oversight of the AAE exemption and promote strict adherence to the rules, a possible solution could be the implementation of random audits. The prospect of being subject to control at any time would serve as a strong incentive for firms to maintain continuous compliance with the exemption criteria.

***Q18**: In general, do you believe that the existing AAE criteria are fit for purpose and allow to adequately identify when a trading activity in the commodity derivatives markets is ancillary to another activity (i.e., allows to bring the right type of entities into the MiFID regulatory perimeter)?*

If yes, please explain.

If no, please explain what alternative ways to assess whether the trading activity/investment services provision of a firm is ancillary to its main activity you would propose. To the extent feasible, please describe a possible impact on the type and number of entities in scope of the AAE under your alternative approach.

Please refer to our answer to Q12

***Q19:** In which of the following aspects – if any – does the current scope of the AAE raise issues? (please select the relevant items, if any):*

a) *adequate conduct supervision of firms active in commodity derivatives markets and enforcement of the financial rulebook (e.g., for the purpose of monitoring market abuse)?*
b) *fair competition between market participants?*
c) *impact on energy prices?*
d) *liquidity of the commodities derivatives market?*
e) *safeguarding prudential and resilience aspects of firms benefitting from the AAE?*
f) *ability to monitor and identify future risks to financial stability (e.g., related to interconnectedness and contagion)?*

Please explain.

Please refer to our answer to Q12.

***Q20:** Do you believe the de minimis test should be broadened by counting the following towards the EUR 3 billion threshold (please select the relevant items, if any):*

a. *trading activity in derivatives traded on a trading venue?*
b. *trading activity in physically-settled derivatives?*

If so, should the threshold be adapted and how?

Please refer to our answer to Q12

***Q21:** The de minimis test threshold is based on exposure in commodity derivatives 'traded in the Union'. Is this criterion on the location of trades fit-for-purpose? Please explain.*

N/A

Q22: *Currently, the de minimis test threshold under MiFID is calculated on a net basis (i.e., by averaging the aggregated month-end net outstanding notional values for the previous 12 months resulting from all contracts). However, other jurisdictions use a gross trading activity threshold instead. Do you believe that it would be more appropriate for the de minimis test threshold under MiFID to be calculated on a gross basis, so as to measure absolute trading activity?*

If so, how should the threshold be adapted?

Currently the "*de minimis* test threshold" is calculated on a net basis, allowing market participants that operate on both sides of the market (buy and sell) to offset their positions. This is a common practice, particularly for agricultural firms acting as intermediaries between farmers and food industry companies.

Switching from a net to a gross basis would be counterproductive for such actors, as it could disqualify them from benefiting from the AAE exemption and push their activities to the OTC market, with the negative consequences on price formation and liquidity already mentioned in our answer to Q12.

Q23*: Currently, MiFID contains a single de minimis test threshold for all types of commodities derivatives. Do you believe the de minimis test threshold should differ depending on the type of commodity derivative market considered (e.g., energy derivatives vs agricultural derivatives)? If so, why, and how should the individual thresholds be adapted?*

Please refer to our answer to Q12.

Q24: *Currently the de minimis test threshold under MiFID is calculated including trading in commodity derivatives for an entity's own account. However, other jurisdictions exclude those transactions, and focus on dealing for the benefit of a third-party. Do you believe the de minimis test should continue to include, or instead exclude, all trading activity carried out for an entity's own benefit (proprietary trading), so as to only rely on dealing activities for the benefit of a third party/client? If so, why and how should the threshold be adapted?*

N/A

Q25: *Considering the introduction of the de minimis test following the CMRP, and with a view to further simplifying the AAE, do you believe that the AAE could be made less complex by:*

a. *abolishing the trading test? If not, do you believe this test continues to be adequately calibrated? If not, how should it be adjusted?*
b. *abolishing the capital employed test? If not, do you believe this test continued to be adequately calibrated? If not, how should it be adjusted?*
c. *through other types of amendments? If so, how?*

Please refer to our answer to Q12.

Q26: *If your entity currently benefits from the AAE, and should your entity not be in a position to benefit from the AAE following a review of the criteria, could you please provide an assessment of the impact of being qualified as investment firm on your operations, and on your ability to maintain active participation in commodity derivatives markets? If possible, please include a quantitative assessment of the costs incurred by such a qualification and all its implications.*

N/A

Q27*: To what extent do you believe the application of IFR/IFD prudential requirements, including those resulting from relevant Level 2 measures, as well as dedicated prudential supervision on all energy commodity derivatives traders, would have avoided or at least partially avoided the liquidity squeeze that such market participants suffered from during the 2022 energy crisis? To what extent would it have limited the need for public intervention providing some of them with the necessary liquidity to meet requirements on margin calls? Please substantiate your answer with quantitative elements, to the extent possible.*

N/A

Q28: *Should a review of the AAE lead to more entities being in scope of MiFID (and also thereby in scope of IFR/IFD):*

1. *do you believe that the current categorisation in IFR/IFD (i.e., three categories of investment firms) should apply to those entities? Should instead a sui generis category be created for those entities newly covered by prudential requirements? If so, what IFR/IFD requirements should apply to firms in that newly created category (e.g. capital, liquidity, reporting, oversight, etc) and why? If possible, please estimate the cost of compliance with this sui generis category within IFR/IFD, as detailed by you above?*
2. *do you see merit in a decoupling, such that it triggers the application of MIFID (including its relevant provisions on supervision), without bringing those firms directly in scope of IFR/IFD (i.e. prudential regulation)? If so, please estimate, if possible, the cost of compliance with the sole MiFID provisions under this scenario.*
3. *do you consider that all or only some MiFID requirements should apply? If the latter, which requirements should be retained (e.g. 'fit-and-proper' assessment)? If possible, please estimate the costs of compliance with those requirements of MiFID.*

N/A

Q29: *Assuming a review of the AAE that would tighten the access to the exemption, what would you expect to see in terms of effects on trading and liquidity? What about the opposite scenario (meaning a widening of the exemption)? Please explain, providing if possible quantitative analysis (in terms of impact on open interest, volumes, number and diversity of participants, bid/ask spreads.).*

Please refer to an answer to Q12.

Q30: *What do you believe would be the expected effect(s) of a reviewed AAE on commodities prices (e.g., energy, agricultural commodities), depending on the changes implemented (tightening or loosening of the AAE)? Please explain.*

Please refer to our answer to Q13.

3. POSITION MANAGEMENT AND POSITION REPORTING

Q31: Currently, under MiFID, reporting from market participants to trading venues on the positions held in instruments traded on those venues is performed by market participants themselves. Do you believe that this reporting could be carried out by clearing members, as it is the case in other jurisdictions, so as to reduce the burden on individual market participants and to enhance accuracy and completeness of reporting? If so, how should it be structured?

AMAFI believes that, in line with the European Commission's objective to simplify and reduce the reporting burden on market participants, the requirement for market participants to report positions to trading venues should be removed. Trading venues already possess the necessary data to access information on positions in listed instruments traded through trading venues.

Q32: *In which of the following cases should venues trading in commodity derivatives receive the full set of information on positions of market participants trading on their venues? (please select the relevant items, if any):*

- *positions held in critical or significant contracts based on the same underlying and sharing the same characteristics, traded on other trading venues*
- *OTC contracts that relate to the same underlying*
- *related C6-carve-out contracts o positions in the underlying spot market*

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

a) imposing additional reporting requirements on market participants (to trading venues), or
b) achieving this through alternative means, such as by leveraging on the existing supervisory reporting channels (e.g., reporting to trade repositories or RRMs), or
c) resorting to the single data collection mechanism as referred to in 1.

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

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

AMAFI understands the objective of facilitating position reporting and managing exemptions for position limit breaches. However, we believe a more flexible and proportionate approach is preferable to a systematic and complex reporting requirement.

Instead of a generalised OTC position reporting obligation, we propose allowing OTC position information to be provided on an ad-hoc basis, at the request of the relevant authorities. This would allow for targeted oversight, without placing unnecessary burdens on market participants.

The FCA's approach with the LME offers useful insight. While the authority's initial proposal called for systematic reporting of OTC positions, this was ultimately deemed overly burdensome. It was subsequently revised to allow for ad-hoc reporting, enabling trading venues to request position information when deemed warranted, such as when assessing a potential position limit breach.

We believe this model strikes a reasonable balance between regulatory needs and minimising operational burdens for market participants. To ensure legal certainty and safeguard commercial confidentiality, it is essential that any such reporting be framed by clear rules, including defined triggers, timelines, and the expected level of detail.

Q33: *With a view to enhancing the supervision of commodity derivatives markets, do you believe that both energy (where relevant) and securities markets supervisors (ACER, NRAs, ESMA, NCAs, collectively competent authorities) should have access to information on market participants active in derivates markets as regards their positions in (please select the relevant items, if any):*

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

Please explain whether your reply differs depending on the type of underlying commodity considered. If you responded yes to either of the above, please explain how the information can be collected by competent authorities and reported in the most cost-efficient way. In particular, please specify your preferred option between:

a) *imposing additional reporting requirements on market participants (to competent authorities), or*
b) *if instead it should be done through alternative means, such as by leveraging on the existing supervisory reporting channels, when they exist (e.g., REMIT reporting), or*
c) *as regards energy derivatives, by granting competent authorities access to the single data collection mechanism as referred to in section 1.*

N/A

Q34: *With a view to enhancing the supervision of wholesale energy markets, do you believe that energy markets supervisors (ACER, NRAs) should have access to information on market participants active in wholesale energy markets as regards their positions in instruments subject to position reporting under MiFID?*

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

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

a) *imposing additional reporting requirements on market participants (to ACER/NRAs), or*
b) *if instead it should be done through alternative means, such as by leveraging on the existing supervisory reporting channels (e.g., MiFID reporting), or*
c) *by granting NRAs/ACER access to the single data collection mechanism as referred to in section 1.*

N/A

***Q35**: The reporting of positions in economically equivalent OTC contracts under Article 58(2) of MiFID applies to investment firms only. Do you believe this requirement should be extended to all persons (like the position limit regime)? Please explain.*

The International Swaps and Derivatives Association (ISDA) addressed the challenges related to reporting positions on complex derivative contracts in a 2022 article titled "Efficiency Through Reporting Best Practice". In this article, the lack of consistency in how the rules have been drafted and implemented is highlighted as one of the biggest challenges for market participants and regulators—particularly regarding reporting requirements for over-the-counter (OTC) derivative transactions..

AMAFI fully shares this observation and considers that a prerequisite for effective and meaningful reporting is the clear definition and shared understanding of the complex rules governing "*economically equivalent OTC derivatives*." Without a precise and commonly agreed framework in this area, any extension of related reporting obligations to non-investment firms would be premature and counterproductive.

***Q36**: In your view, is the current definition of 'economically equivalent OTC derivatives' under MiFID fit for purpose? If not, what changes would you propose?*

Please refer to our answer to Q35.

***Q37:** MiFID requires that position reporting specifies the end-client associated to the positions reported. However, the legal construction of the current position reporting framework entails that, for positions held by non EU-country firms, such non EU-country firms are to be considered the end-client. This prevents the disaggregation of positions held by those non EU-country firms, and therefore the identification of the end-clients related to those positions. Does the lack of visibility by NCAs and/or by trading venues of the positions held by the beneficial owner (end client) when that position is acquired via a non EU-country firm raise*

issues in terms of proper enforcement of position limits and, in the case of trading venues, of their position management mandate?

If so, should the position reporting framework be amended to specify that non EU-country firms also have to report who is the end-client linked to the position they hold in venue-traded commodity derivatives and/or economically equivalent OTC derivatives?

Identifying the end-client, particularly in cases involving non-EU country firms, is extremely challenging and unfeasible within the current reporting framework and with the data currently available. Market participants lack the means to identify the ultimate beneficial owner, especially when positions are held indirectly, with the involvement of many intermediaries.

Trading venues already receive position data from market participants and compare them with their own calculations. When discrepancies arise, it is the responsibility of the participants to resolve them, even though trading venues are better positioned to identify end-clients, as they have direct access to the relevant information.

This situation introduces unnecessary complexity and inefficiency into the reporting process. A more effective approach would be to leverage the information already held by trading venues, rather than imposing unrealistic identification obligations on market participants.

4. POSITION LIMITS

***Q38:** What is your general assessment of the impact of position limits on the liquidity of commodity derivatives contract that are subject to them?*

AMAFI understands that, overall, market participants in sectors such as agriculture and gas are generally satisfied with the current level of position limits. These limits are seen as balanced and do not appear to have a negative impact on market liquidity in these segments.

As such, we do not support any changes to the current framework, which seems to be functioning effectively.

***Q39**: What is your general assessment of the impact of position limits on the ability of commercial (non-financial) entities to hedge themselves?*

Please refer to our answer Q38.

***Q40:** Do you believe that position limits under MiFID, as amended by the CMRP, have achieved their purpose of preventing market abuse and maintaining orderly trading? Please explain.*

AMAFI considers that the amendments introduced by the Capital Markets Recovery Package (CMRP) have effectively reduced the administrative burden linked to position limits. This streamlining of the

framework is viewed positively, as it has contributed to cost savings and improved operational efficiency for market participants.

***Q41**: In your view, what was the impact of the reforms introduced by the CMRP (reduction of the scope of contracts subject to position limits, broadening of the hedging exemption to some financial entities, introduction of the liquidity provision exemption) on the liquidity and reliability of EU energy derivatives markets? Please include any quantified impact in terms of open interest, volumes, number and diversity of participants, bid/ask spreads, etc. In particular, do you believe that the extra flexibility introduced had an impact on market participants' ability to access hedging tools in smaller, less liquid markets (e.g., local electricity or gas hubs).*

N/A

***Q42:** Do you believe that the current criterion to determine whether a contract is a 'significant or critical contract' is fit for purpose, and why? If not, how should it be reviewed? In particular, do you believe that this definition should vary depending on the underlying commodity?*

N/A

***Q43:** In your view, under the current position limit regime, could there still be scope for traders of some commodity contracts (spot or derivative) to use their positions in commodity derivatives with a view to unfairly influence prices or secure the price at an artificial level?*

If so, please indicate which types of commodity derivatives are particularly exposed to such risks, and whether any changes to the current position limits regime could address these situations. Please also indicate whether such changes could also affect the orderly price formation process for said contracts.

AMAFI believes that the current position limit regime, supported by existing transparency obligations and the market data accessible to regulators, strikes a balanced and proportionate approach to monitoring and preventing potential market abuse.

***Q44:** Contracts with the same underlying and same characteristics subject to position limits are sometimes traded on several trading venues. Do you believe that the level of the position limit for those contracts should be set at European level (e.g., by ESMA), as opposed to the NCA responsible for the supervision of the main trading venue for that contract?*

Do you believe ESMA should be in charge of monitoring and enforcing the position limits for those contracts? Please explain.

AMAFI considers that national competent authorities are generally best placed to set and monitor position limits, given their understanding of local market structures and trading practices.

An aggregated limit at European level for contracts traded on multiple venues could prove difficult to implement effectively, especially where underlying markets differ in terms of delivery mechanisms or liquidity. Such an approach would not be appropriate for all segments.

***Q45**: Some jurisdictions only apply position limits to physically-settled futures. Once captured by the position limits, cash-settled versions of those contracts however also count towards the position limits. This means that futures that are not physically-settled (e.g., futures on power) cannot be captured by the position limit regime in those jurisdictions. Do you believe that position limits in the EU should only apply to futures contracts that are physically-settled? What would be the benefits or risks linked to the implementation of such an approach in the EU?*

AMAFI considers that position limits should apply to both physically settled and cash-settled futures, as both can be used to influence market prices. Limiting the scope to physically settled contracts could create loopholes and increase the risk of market manipulation.

However, differentiated treatment may be appropriate, particularly through tailored position limits that reflect the specific risks of each type of contract. This is especially relevant for physically delivered contracts, which raise distinct concerns related to delivery periods and positions approaching expiry.

***Q46**: Do you perceive an advantage or disadvantage of having separate position limits for physically and cash settled futures contracts for natural gas contracts, as is the case for Henry Hub futures in the US? For other contracts? Please explain.*

N/A

***Q47**: Do you believe that the methodology and the level of the limits set by NCAs, for contracts subject to position limits, is adequate? If not, please indicate which contracts are in your view not subject to adequate position limit levels.*

AMAFI considers that, overall, the methodology and the level of position limits set by NCAs for contracts subject to such limits are adequate. No particular contracts have been identified as having inappropriate position limit levels.

***Q48:** The Draghi report refers to the possibility to set stricter position limits, including by differentiating them by types of traders. Do you believe that position limits should be differentiated, depending on the type of traders/trading activity involved? If so, how?*

AMAFI considers that the current exemptions from position limits are fit for purpose and sees no need for any changes.

***Q49**: Do you believe that the current exemptions from position limits as set out in MiFID, notably the hedging exemption, are fit for purpose? If so, explain why. If not, what changes to such exemptions would you propose? Are there certain markets where such exemption from position limits are more/less justified and is there merit to differentiate between types of commodity markets?*

AMAFI considers that the current exemptions from position limits are fit for purpose and sees no need for any changes.

***Q50:** Do you believe that the hedging exemption is sufficiently monitored by the competent supervisors? If not, what is the most effective and efficient way for supervisors to monitor and ensure compliance with the hedging exemption?*

AMAFI has no opinion regarding the effectiveness of the hedging exemption as currently implemented by the competent supervisors.

***Q51**: Do you believe that trading venues should play a greater role in granting hedging or liquidity provision exemptions from position limits to market participants?*

AMAFI does not consider trading venues to be the appropriate entities to grant hedging exemptions, as this responsibility should remain with the competent authorities to ensure neutrality and regulatory consistency.

Regarding liquidity provision exemptions, if this refers to situations where a temporary exemption could be granted to a liquidity provider, in the event of a short-term breach, then trading venues or clearing houses might have a role to play, providing that their role is clearly defined with predefined and transparent rules.

***Q52**: Some jurisdictions allow supervisors and/or trading venues to grant ad hoc exemptions outside of the legally enumerated cases for exemptions for some contracts, if they perceive that the request is legitimate. Do you believe the EU should also introduce such a flexibility for supervisors and/or trading venues?*

If so, please explain which specific cases could warrant an ad hoc exemption from position limits, and whether the power to grant an ad hoc exemption should be vested with an NCA or with ESMA. If not, why?

AMAFI supports a prudent approach to the possible introduction of ad hoc exemptions. While the idea is not without merit, any new framework should be clearly defined and limited to well-identified situations. AMAFI would not support the introduction of additional responsibilities that may prove difficult to manage in practice.

Q53: *Do you believe that trading venues (please select the relevant items, if any):*

a) *should be given more responsibility in setting position limits in general, for those contracts that are by law subject to position limits (i.e., commodity derivative contracts that qualify as significant and critical or are not agricultural derivative contacts), instead of competent authorities?*
b) *should be in charge of setting position limits for non spot month versions of contracts subject to position limits, thereby applying regulator set position limits only to spot month contracts, as seen in other jurisdictions?*
c) *should be required or rather given a possibility to set their own position limits for contracts that are not subject to position limits by law?*

Please explain the potential advantages or disadvantages linked to those options.

AMAFI considers that trading venues should not be given broader responsibilities in setting position limits.

While it is possible to justify position limits for the spot month based on observable physical constraints—such as deliverable supply or storage capacity—this becomes far more uncertain for non-spot month versions of contracts where market conditions are more volatile and less predictable.

Delegating such responsibilities to trading venues risks introducing inconsistency and regulatory uncertainty. For these reasons, AMAFI believes that competent authorities remain best placed to oversee and calibrate position limits, ensuring a harmonised and balanced application across the EU.

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

N/A

Q.55*: Do you believe that the position limits regime should also apply to 'C6 carve-out' products? If so:*

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

N/A

***Q.56**: Do you believe that energy and financial regulators should cooperate in the process of setting position limits for wholesale energy products?*

N/A

5. CIRCUIT BREAKERS

***Q.57**: What is your assessment of the effectiveness of IVMs and of their enforcement by NCAs (or the adaptation of existing circuit breakers following the adoption of Council Regulation (EU) 2022/2576) in avoiding excessive price volatility of energy-related derivatives during a trading day?*

N/A

***Q.58:** Do you believe trading venues should be permanently required to implement static circuit breakers to further restrain excessive daily volatility for commodity derivatives specifically, as a complement to circuit breakers already implemented? What would be the associated advantages and disadvantages? If you replied yes, how should those static circuit breakers be calibrated? In particular, should those static circuit breakers apply only to certain types of commodity derivative instruments, or differ depending on the type of commodity derivative considered? More specifically, should IVMs similar to those provided for by Council Regulation (EU) 2022/2576 be introduced and applied on a permanent basis? Please explain.*

During the Ukrainian crisis, dynamic circuit breakers demonstrated their effectiveness by enabling temporary trading suspensions without requiring prolonged market closures—as experienced, for example, on ICE.

Such temporary and limited suspensions are essential to maintain alignment between regulated markets and the physical or OTC markets. A prolonged disconnection between these markets would undermine effective price formation and market stability.

The primary purpose of any circuit breaker mechanism must be to facilitate a secure and timely resumption of trading. “Secure” means providing market participants with sufficient time to assess price movements and adapt to new market conditions before trading resumes. This is crucial to avoid liquidity shifting toward physical or OTC markets.

For this reason, static circuit breakers that impose full-day price limits—such as those outlined in the consultation—must be avoided. Such mechanisms hinder the timely reopening of markets, potentially leading to multi-day closures and significant price distortions. For these reasons, AMAFI strongly recommends avoiding static approaches and instead promoting dynamic mechanisms that ensure both market resilience and continuity.

Q.59: *What should be the effect of hitting those static price bands (should this trigger for instance trading halts or order rejection mechanisms)? In your view, what are the pros and cons of each mechanism?*

If you favour trading halts, what duration do you recommend for an appropriate trading halt that is long enough for market participants to assess the situation and their position in the derivatives market and for the market to 'cool off'? Would your assessment differ according to the type of underlying commodity considered?

Please refer to our answer to Q58.

Q.60: *Do you see any risk in static circuit breakers applying to spot month contracts, considering possible implications on physical delivery, as well as possible valuation challenges and divergences between spot and futures prices? Please explain.*

Please refer to our answer to Q58.

Q.61*: Do you perceive that implementing static price bands would risk moving trading to OTC markets? If so, what would be possible mitigants to prevent such migration?*

Please refer to our answer to Q58.

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

Please refer to our answer to Q58.

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

AMAFI sees no specific justification for excluding spot energy products or C6 carve-out products from the application of circuit breakers similar to those in place for other commodity markets. There is no evident reason why these products should be treated differently in this regard.

6. ELEMENTS COVERED BY THE DRAGHI REPORT

6.1 – Obligation to trade in the EU

***Q.64**: Do you believe a general obligation to trade in the EU should be introduced? If so, for which instruments should this obligation apply? Please explain.*

AMAFI strongly opposes to a general obligation to trade in the EU, as imposing overly strict restrictions or forcing limited access could hinder arbitrage mechanisms that are essential for the efficient functioning of markets and price formation.

***Q.65**: If such a general obligation were to be introduced, please set out any possible impact on EU market participants' ability to hedge, notably with non-EU counterparties.*

Please refer to our answer to Q64.

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

Please refer to our answer to Q64.

6.2 – The Market Correction Mechanism and other dynamic caps

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

When implemented, the Market Correction Mechanism raised serious concerns among market participants about its actual effectiveness in preventing price spikes and reducing systemic risks. A suspension of futures markets in the EU would likely have had a limited impact on spot prices, which are the real drivers of derivatives prices. In addition, trading activity could have shifted to OTC markets or non-EU platforms not covered by the mechanism, reducing transparency, weakening hedging strategies and increasing the concentration of risk among a limited number of counterparties. Another risk was that the mechanism could unintentionally increase margin calls, as clearing houses may raise margin requirements if they expect liquidation to be more difficult during a market suspension.

In the end, the final calibration of the mechanism - including the absolute and relative price thresholds and the exclusion of default management operations - reflected a degree of caution by the EU authorities and an awareness of the risks involved.

***Q.68**: Building on the experience of the MCM, do you think dynamic caps based on external prices (whether in the shape of the MCM or in another shape) would help avoid situations*

where EU energy spot or derivatives prices significantly diverge from global energy prices, and should therefore be codified in legislation? If not, please explain why, and specify, if relevant, to what extent you believe price divergences between EU prices and international prices can be warranted. If so, please explain to which products you believe such dynamic caps should apply (e.g., spot/derivative, OTC/venue-traded) and how such dynamic caps should be calibrated (e.g., reference price, frequence at which the boundaries are renewed, etc.). Please point to potential risks and opportunities.

Please refer to our answer to Q67.

***Q.69**: Do you believe that the MCM or other dynamic caps could have an impact on the attractiveness and/or stability of EU commodity derivatives markets? If so, please explain how.*

Please refer to our answer to Q67.

***Q.70**: What is your assessment of the impact of a triggering of the MCM on trading conditions and financial stability?*

Please refer to our answer to Q67.

***Q.70**: If such a general obligation were to be introduced, please set out any possible impact on EU market participants' ability to hedge, notably with non-EU counterparties.*

Please refer to our answer to Q67.

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

Please refer to our answer to Q67.

6.3 - Application of to the spot market organisational and operational requirements

***Q.72**: Do you believe that requirements similar to some/all organisational requirements imposed on MiFID firms as market participants should also be imposed on market participants in spot energy markets, without requalifying those entities as investment firms, and why? If so, could you please make specific references to those organisational requirements, which are currently foreseen under MiFID and should in a similar way apply to market participants in spot energy markets? Where possible, could you please estimate expected costs to your entity, and potentially other entities that would have to comply with those new requirements, distinguishing one-off costs and recurring compliance costs (for instance, per year).*

N/A

***Q.73**: Do you believe that key rules similar to those applicable to MiFID trading venues should also apply to spot energy exchanges, and why? If so, could you please make specific reference to those? Where possible, could you please estimate a possible cost for spot energy trading venues that would have to comply with those new requirements.*

N/A

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

N/A

***Q.75**: The revised REMIT clarified that benchmarks used in wholesale energy products are captured by the market abuse-related provisions in that Regulation. Do you believe that this is sufficient to ensure the integrity of such benchmarks, and avoid risks of manipulation? If not, please explain whether you would see merit in establishing rules similar to those imposed on benchmarks used in financial instruments and financial products under Regulation (EU) 2016/1011, and why.*

N/A

***Q.76**: Do you believe that the application of rules similar to the ones included in MiFID to spot energy market participants could have helped preventing at least some atypical trading behaviours (e.g., lack of forward hedging, trading on weekends) during the energy crisis, and limited repercussions on derivative markets? Please substantiate your response.*

N/A

6.4 - Enhanced supervisory cooperation in the energy area

***Q.76**: Do you agree that the current situation leads to a complex supervisory scenario between various national and sometimes regional supervisors which may slow down reactions in times of crisis? If so, can you point to any concrete examples? Furthermore:*

a) *If you replied no, please explain why you believe the current supervisory structure should not be challenged.*
b) *If you replied yes, do you agree that a supervisory college structure would improve cooperation between supervisors of energy spot and derivative markets?*
c) *If you deem that a supervisory college structure would improve cooperation between energy spot and derivative markets, please describe how this structure should look and what its main roles and responsibilities should be. In particular, please explain whether you think that a supervisory college would make sense only for some contracts/products (e.g., products of Union-wide relevance) and, if so, which ones.*
d) *If you deem that a supervisory college structure would not improve cooperation between energy spot and derivative markets, please describe how the cooperation between energy and derivative markets regulators could be further enhanced. In particular, please explain whether you believe that enhanced cooperation in the energy sector could be achieved by including in the financial legislation similar provisions with those included in the revised REMIT that will allow for enhanced cooperation and information exchanges between regulators in the financial market and energy respectively in combination with the creation of a common database for financial and energy regulators?*

N/A

***Q.76**: The Benchmark Regulation (Regulation (EU) 2016/1011) sets the regulatory and supervisory regime for commodity benchmarks used in financial instruments or financial products. Those benchmarks usually at least partially refer to market dynamics in the underlying physical commodity market. Do you believe that, when it comes to energy benchmarks, there is adequate cooperation between energy markets supervisors and securities markets supervisors? If not, what would be the merits of enhancing supervisory cooperation in that area?*

N/A