

FESE Response to ESMA Consultation Paper

ESMA's guidelines on information expected or required to be disclosed on commodity derivatives markets or related spot markets under MAR

Introduction:

The Federation of European Securities Exchanges (FESE) represents 36 exchanges in equities, bonds, derivatives and commodities through 19 Full Members from 30 countries, as well as 1 Affiliate Member and 1 Observer Member. FESE represents public Regulated Markets (RMs), which provide both institutional and retail investors with transparent and neutral price-formation.

At the end of 2015, FESE members had 9,201 companies listed on their markets, of which 6% are foreign companies contributing towards the European integration and providing broad and liquid access to Europe's capital markets. Many of our members also organise specialised markets that allow small and medium sized companies across Europe to access the capital markets; 1,299 companies were listed in these specialised markets/segments in equity, increasing choice for investors and issuers. Through their RM and MTF operations, FESE members are keen to support the European Commission's objective of creating a single market in capital markets.

FESE is registered in the European Union Transparency Register with number 71488206456-23.

Questions:

Q1: Do you agree with the examples provided? If not, please explain.

No, FESE disagrees. Some details need to be addressed:

- 31 a) Exchanges do not make fundamental changes to commodity specifications in a way which will create windfall profits and losses for existing holders of open interest. If there is a need to make a fundamental change in commodities specifications, an exchange will implement it by either: (i) simply by creating a new contract rather than modifying current specifications when there is an open interest; (ii) only applying the change to those deferred delivery/expiry months of the current contract in which there is no open interest; or (iii) applying the change to all contract months whilst applying offsetting payments to neutralize any windfall profits and losses. In light of such arrangements, it would not be possible for a market participant to profit from advance knowledge of a change to commodity specifications. As such, FESE believes that paragraph 4(a) of the Proposal of Guidelines should be deleted.
- 31 b) Tick sizes and strike prices are not price sensitive information and should be deleted from the list of examples.
- 31 b) i) Delivery points can be relevant depending on the contract terms. This criterion should be assessed on a case by case basis rather than in general terms and therefore should be deleted from the list of examples.

- 31 b) ii) A change of fees for market makers is not price sensitive information and should be deleted from the list of examples. Provisions dealing with general requirements that have to be fulfilled by market makers are usually contained in the rules and regulations of the trading venues and are therefore usually public. The same applies to provisions dealing with changes to the provisions and requirements that market makers have to comply with. Compliance of the market makers with these requirements are closely monitored by the market surveillance department of the respective trading venue. However, compensations to the market makers are typically part of an agreement that is negotiated between the trading venue and the market maker and that is not publicly disclosed. Market making is a service that is delivered and compensated. For obvious commercial reasons, information on the content of such exchange of service agreements cannot be expected to be disclosed.
- 31 b) iii) A change of the members of the trading venue is not price sensitive information and should be deleted from the list of examples. If the names of market makers had to be disclosed, some markets would simply not exist. For that reason, making agreements may include confidentiality clauses about the name of the market maker.

Q2: Can you think of other examples of information directly relating to commodity derivatives that should be considered in the Guidelines? Please explain.

No comment.

Q3: Do you agree with the above examples? If not, please explain.

No comment.

Q4: Can you think of other examples of information indirectly relating to commodity derivatives that should be considered in the Guidelines? Please explain.

Weather forecasts are important for agricultural commodities as weather impacts the production.

Political statements that at a later stage are suggested as new laws or provisions, either nationally or applicable within the whole EU/EEA. Such information might include statements on capping/flooring market prices or providing future restrictions on production supply. Examples of these types of political statements have been given to the commodity derivatives market over the past years.

Q5: Do you agree that information relating to the “goods” subject to the freight contract should be considered as information indirectly related to derivatives on freight rates? Please, explain.

No, FESE disagrees as this information is too broad. A case by case approach would be more efficient. For example, the price of freight would be more important for derivatives priced on a CIF basis as opposed to an FOB or ex warehouse basis. Also, load out rates are important as they can affect price determination.

Q6: Can you think of other examples of information expected/required to be disclosed in relation to commodity derivatives for which the underlying asset is not an actual commodity as per MAR definition? Please, specify.

We propose to add information to the list the types of information that today are published through many providers concerning the supply side of shipping; i.e. the size of the current fleets of ships and new ships under construction and in order.

Q7: Can you think of other examples of information related to the infrastructures, storage facilities and transportation (e.g. pipeline)? Please specify.

We believe that together, REMIT (Regulation (EU) No 1227/2011) and the Fundamental Data Transparency Regulation (Regulation (EU) No 543/2013), cover basic information that could be reasonably expected to be disclosed.

We propose to add the following examples of information to be disclosed, e.g.:

- Decommissioning, dismantling or closing of transmission, production or consumption units
- Expansion of existing or new transmission, production or consumption units
- Special request from TSO's to hold back additional production or consumption from the market due to problems with peak load
- Allowance from TSO's to dispose of production or consumption units that normally are kept by TSO's as peak load reserves
- Coast-down of nuclear power plants
- Sealed in production
- Special incidents – e.g. terror threats

We believe it is of utmost importance that an overlap in the application of REMIT and MAR is avoided. We do not think this is currently the case. The definition of inside information, for example, covers both, energy wholesale products (REMIT), as well as commodity derivatives (MAR). The definition of commodity derivatives (Annex 1 of MiFID II) excludes all gas and electricity derivative contracts that are traded on an OTF and must be physically settled ("REMIT carve-out"). However, other gas and electricity derivative contracts that are not traded on an OTF and can be physically settled as well as all cash settled contracts are not excluded and therefore covered by both MAR and REMIT. We would like ESMA to clarify which definition of inside information should apply to these contracts.

This is particularly important to find out as the two definitions differ. The REMIT definition do not include a condition that the information must be reasonably expected to be disclosed or required to be disclosed, but simply including all information that a reasonable market participant would be likely to use as part of the basis of its decision to enter into trading activity. Thus, the REMIT definition might also include information that is not expected to be disclosed but used if it were disclosed.

Q8: Can you think of other examples of information that are expected or required to be made public in relation to agricultural commodities? Please specify.

The actual level of stocks or deliverable supply should be made public as well as information on harvest forecast and timing. Exceptionally, the insolvency of a market participant may be relevant.

Q9: Can you think of other examples of information that are expected or required to be made public in relation to metal commodities? Please specify.

No comment.