– Consultation Response –

ESMA Consultation on Technical Standards for Commodity Derivatives - MiFID II Recovery Package

Brussels, 15 July 2021 | Europex welcomes the opportunity to provide feedback to ESMA's draft proposals for the review of RTS 21 and ITS 4 as well as the proposal for new technical standards for position management controls. Europex' members have gained extensive experience with the implementation of the MiFID II position limit regime and position management provisions. We are therefore grateful to be given the opportunity to share some of these insights to help further improve the generally positive proposals by ESMA.

Please see our responses to selected questions below[1].

Introduction

RTS 21a.

Overall, we are supportive of the suggested changes and believe they will significantly improve the current position limit regime for those contracts still subject to it. Particularly for new and less liquid contracts, we believe that the proposals will substantially improve the status quo.

However, there are two proposals that have raised serious concerns. Both relate to the case where deliverable supply is substantially higher than open interest:

1) We strongly disagree with ESMA's proposal to set the baseline for the spot month position limit based on 25% of open interest instead of on 25% of deliverable supply. (See our response to Question 9 for further details.)

2) We disagree with ESMA's proposal to adjust the spot month position limit downwards. (See our response to Question 13 for further details.)

[1] For more details see the full ESMA consultation and its accompanying documents: Link

Both proposals seem to suggest that position limits should be tightened if deliverable supply is substantially higher than open interest. However, such a situation is inherent to markets where exchange-trading remains underdeveloped (i.e. most commodity derivative markets in Europe) or when the majority of trading takes place on other venues. There is no increased risk of market manipulation which would justify a tightening of the limit. Moreover, the proposals would again hamper the further development of such illiquid markets. Please see our responses to Questions 9 and 13 for a detailed explanation.

We are particularly supportive of the new de minimis regime for agricultural contracts, now referring to contracts below 20,000 lots of open interest (and receiving a 10,000 lots threshold). We believe this proposal is essential to allow for less liquid contracts to develop.

ITS4

We support all ESMA proposals.

PMCs

About the objective to specify position management controls

Regarding position management controls, we acknowledge ESMA's objective to reduce the possible differences in the way positions are managed by trading venues and increase their harmonisation. Against this background, we have noted that ESMA's analysis does not primarily cover the position management controls implemented by EU commodity derivative trading venues but rather those implemented by non-EU venues.

How did EU venues implement MiFID II PMCs?

Generally, Europex members have considered the position management controls in MiFID II Art. 57 para. 8 as powers to monitor positions, request more information about these positions and, if needed, intervene by requiring a reduction of the respective position and/or bringing liquidity back into the market. If it had not already been the case, the powers have typically been implemented via our members' rulebooks and are operated by the respective Market Surveillance Departments.

As a reminder, trading venues monitor and investigate positions via, for example, the use of information requests. However, information about positions alone generally does not give sufficient indication about possible market manipulation. The detection and prevention of market abuse is primarily based on the constant monitoring of trading behaviour (i.e. orders and trades) in a specific market.

The same is true for orderly pricing and settlement: not open positions but trading activities affect orderly pricing and settlement. In particular, the settlement price is based on order prices, trade prices or fair values and is entirely independent of the positions of market participants. Hence, orderly pricing and settlement are primarily ensured through the surveillance of orders, trades and the prices thereof.

These practices are in line with the existing regulatory frameworks set out in the EU Market Abuse Regulation (MAR) and the EU Regulation on Energy Wholesale Market Integrity and Transparency (REMIT).

ESMA's proposal on PMCs

As mentioned above, Europex members have implemented position management controls as part of wider, sophisticated market surveillance arrangements which have proven to be effective in preventing market manipulation and ensuring orderly pricing and settlement.

If ESMA were to maintain its proposal to require trading venues to set accountability levels in addition to the existing regulatory frameworks for the prevention of market abuse (e.g. MAR and REMIT), we believe that ESMA should at least introduce the necessary discretion for trading venues to set these accountability levels as they deem appropriate. If not, the accountability levels are likely to put a disproportionate compliance burden on both the exchanges' market surveillance departments and trading participants' compliance departments.

Trading venues are best placed to conduct these tasks as position management regimes need to be carefully calibrated and tailored to the individual circumstances of each trading venue, including the nature of its membership as well as the characteristics and underlying markets of the contracts it offers for trading. There is no 'one size fits all' position management regime that would be suitable for all trading venues.

The recent amendments introduced by the MiFID II Quick Fix acknowledge this by taking a venue-centred approach for the design of position management controls, granting trading venues additional powers to, among others, obtain information from market participants and, where appropriate, from other trading venues. These powers can be used by trading venues as part of their position management controls in the context of a trading venue's broader market surveillance responsibility to guarantee fair and orderly trading. The recent Quick Fix amendments to MiFID II also give a mandate to ESMA to develop draft regulatory technical standards to further specify the position management controls. This mandate clearly stipulates that the characteristics of the trading venues concerned need to be taken into account.

With a view to the present draft proposals, we are concerned that the position management controls proposed by ESMA reflect a prescriptive requirement rather than a useful, tailormade power for trading venues for market surveillance purposes, as intended by the Level 1 text.

In Article 2 (1) of the new draft RTS on position management controls, ESMA proposes the obligation for trading venues to set accountability levels. In the following paragraph, Article 2 (2), ESMA subsequently suggests requiring trading venues to request additional information from persons regarding the nature and purpose of the position each time an accountability level is breached. Article 2(3) of the draft RTS would also require a trading venue to exercise its power to request a substantial amount of information with every breach of an accountability level. This would include all relevant documentation from persons about the size and purpose of a position or exposure entered into, information about beneficial or underlying owners, any concert arrangements and any related assets or liabilities in the underlying market.

The suggested highly prescriptive process for the implementation of position management controls would leave little room for discretion for trading venues. Market surveillance activities are separate from automated surveillance processes and alerts, practices largely based on a trading venue's in-depth understanding of the market as well as detailed knowledge about its members and their trading strategies. The existing processes already include information requests whenever there is a suspicion of market abuse or fear of price distortion. Imposing mandatory additional requests due to a breach of accountability levels alone will not increase the effectiveness of position management controls. Implementing the suggested prescriptive process would require significant resources from market surveillance departments, yet is very unlikely to result in any additional findings as the existing market knowledge and experience could easily distinguish between cases of market manipulation and cases of unsuspicious standard market practice.

For example, it may be appropriate for a firm to breach accountability levels on a frequent basis if the firm in question has a naturally large position in a given market due to its physical exposure in that market. Mandatory information requests and investigations each time a breach occurs could considerably burden both the firm and the exchange's market surveillance department when both are already familiar with the reason for the firm's breach of accountability levels. The clearly defined relationship between the firm and the trading venue, as well as the expertise of the trading venue in operating the market, justifies leaving more discretion to the trading venue, improving compliance efficiency.

While we appreciate that the ESMA proposal takes inspiration from the CFTC rules, we deem it essential to also consider the level of discretion trading venues receive under the CFTC rules. In the context of accountability levels, the CFTC does not obligate exchanges but authorises them to set accountability levels. Depending on the product, this can be done during the spot month and/or non-spot months, each time subject to whether the respective trading venue deems it "necessary and appropriate". In line with the CFTC rules, we believe that trading venues are best placed to determine:

1) For which contracts accountability levels should be set

We believe that the trading venue should have full discretion to determine for which contracts accountability levels should be set. This is because the market surveillance departments of trading venues are best placed to determine which asset classes and products could be prone to market manipulation and which ones are not.

2) For which timeframe accountability levels are actively monitored

For some contracts, it might be sufficient to only set accountability levels on the spot month contracts or even only a few days before expiry.

3) Whether a breach of the set accountability level creates a concern and hence an information request should be triggered

As mentioned earlier, to prevent a disproportionate burden on both the exchange's market surveillance department as well as the market participant's compliance department, if a trading participant exceeds the accountability levels, the trading venue should be able to determine whether an information request is needed, and if so, which information is required.

If ESMA were to maintain its proposal to require trading venues to set accountability levels, we believe that ESMA should at least introduce the necessary discretion in paragraphs 1, 2 and 3 and the second part of paragraph 4 of Article 2 of the draft RTS, by replacing the words "shall" by "may".

The amended Article 2 would then look as follows:

*1. As part of their position management controls, trading venues trading commodity derivatives **may** ~~shall~~ set accountability levels in the spot month as defined in Article 2(3) of Commission Delegated Regulation [RTS 21a] and in the other months as defined in Article 2(4) of Commission Delegated Regulation [RTS 21a] ~~at least for the physically settled commodity derivatives made available for trading~~.*

*2. For the purpose of paragraph 1, an accountability level is the level of the net position held in a commodity derivative by persons with close links that, when exceeded, ~~shall~~ **may** trigger an additional information request by the trading venue. as to the nature and purpose of the position*

*3. When a net position held by persons with close links in a commodity derivative referred to in paragraph 1 exceeds the accountability level set for the spot month or for the other months in accordance with paragraph 1, the trading venue ~~shall~~ **may** exercise the power set out in point (b) of the first subparagraph of Article 57(8) of Directive 2014/65/EU to obtain any additional information as to the nature and purpose of the position held in that commodity derivative.*

*4. The trading venue shall assess the information provided and, where appropriate, **may** exercise the powers set out in points (c) and (d) of the first subparagraphs Article 57(8) of Directive 2014/65/EU.*

We are also of the opinion that further detailing the design of position management controls beyond what has already been put forward in the draft RTS would not be in line with the intent of the co-legislators. In paragraph 120 of the consultation paper (p. 32.), ESMA states that it is "minded to keep an open approach to the methodology to be used by trading venues" to set accountability levels. However, in the same paragraph, ESMA notes that there would be value in developing further guidance on the methodology, as this would contribute to a harmonised approach and level playing field across trading venues.

A harmonised methodology for setting accountability levels by means of ESMA guidance is unlikely to provide for sufficient granularity to be suitable for the broad variety of products trading venues offer for trading. Ill-calibrated accountability levels could trigger frequent unnecessary alerts, thereby burdening market surveillance and compliance staff with numerous information requests and investigations, eventually distracting them from their core mission of safeguarding fair and orderly markets.

Moreover, we are firmly of the view that trading venues do not compete by lowering standards for market surveillance practices, nor could they obtain any competitive advantage by not implementing an adequate methodology for setting accountability levels. The opposite is true. Strong market surveillance practices that ensure the integrity of the market bring confidence to market participants and make trading venues more attractive.

> *Q1: Do you agree with ESMA's proposal regarding the impact of the new hedging exemption on the aggregation of positions?*

Yes, we agree with ESMA's proposal and consider it to be in line with the intention of the co-legislators. Replicating the arrangements for qualifying positions for the hedging exemption currently in place for Non-Financial Entities ensures consistency between the various exemptions and allows them to be used by financial entities in a non-discriminatory manner. We support the proposal.

> *Q2: Do you agree with ESMA's proposal for positions qualifying as risk-reducing?*

Yes, we support the proposal. We believe it is helpful to have an identical approach for classifying transactions as risk reducing for all positions held by financial entities and non-financial entities that qualify for a hedging exemption under the MiFID II position limit regime.

> Q3: Do you agree with ESMA's proposal on the application procedure for financial entities?

Yes, we support the proposal. The application procedure adopted for non-financial entities should be copied for financial entities where possible. An identical application procedure provides for the equal treatment of the various market participants when applying for a hedging exemption and there are no apparent reasons for any differentiation.

> *Q4: Do you agree with ESMA's proposal on the application procedure for mandatory liquidity provision exemption?*

Yes, we agree and support the proposal.

> *Q5: Do you agree with ESMA's proposal on qualifying positions?*

Yes, we agree and support the proposal.

> *Q6: Do you agree with ESMA's proposed definition of financial entities?*

Yes, we agree and support the proposal.

> *Q.7: Do you agree with ESMA's proposal regarding the aggregation and netting of positions in a commodity derivative?*

1) We support ESMA's proposal to delete the reference to "the same commodity derivative".

2) We do not believe "spread contracts" require a special treatment under the position limit regime. When spread trading is merely a trading strategy, two combined orders in at least two different contracts (for example two different maturities) are executed simultaneously. Both of those legs count towards the position limits of the respective outright futures contracts. Europex notes that in the event a trading venue admits to trading a differential contract whose contract terms reflect the economics of two separate outright markets, a separate position limit is also not required. Instead, the position in the differential contract can be deconstructed into equivalent long and short positions and aggregated with any positions of the respective outright markets reflecting the economics of the differential.

3) We agree with the proposal to aggregate the positions of commodity derivatives that are based on the same underlying and share almost the same specifications as the principal or main commodity derivative traded on the same trading venue, such as "minis" and "balmos".

> *Q.8: Do you agree with ESMA's proposal for significant volumes?*

Yes, we agree and support the proposal.

> *Q.9: Do you agree with ESMA's proposal regarding Article 11 of draft RTS 21a?*

We are seriously concerned about the negative effects of such a proposal and question the reasoning behind it.

A position holder's ability to squeeze or corner a market is entirely dependent on the deliverable supply. Where deliverable supply is high in comparison to the respective position a person holds, this person has little power to squeeze or corner a market. This is because other position holders can easily close out their positions.

As many exchange-traded commodity derivatives markets in Europe are still relatively illiquid compared to the total available commodity, it is a direct consequence that the deliverable supply would be substantially higher than the open interest. Setting the baseline for the spot month limit at 25% of open interest in these cases would have no economic basis and would be unjustified for two reasons:

1) A substantially higher deliverable supply does not mean that the market is more prone to market cornering. On the contrary, in these cases a substantially higher share of the trading is taking place outside the respective derivative contract, either on other trading venues or, more likely, outside the regulated environment. It would thus be close to impossible to squeeze a contract of which the open interest reflects only a small share of the overall market. More logical would be the opposite reasoning, i.e. in case that deliverable supply is substantially higher than open interest, an upwards review of the position limit of the other month contract would be needed. See also our response to Q13 for further details.

2) It would penalise the spot month contract for the lack of development of the exchange-traded commodity market or, in case trading is already taking place at a competing regulated market, hamper the development of a newly introduced on-exchange contract. As a situation in which deliverable supply is substantially higher than open interest reflects a market with substantial growth potential, a limit based on open interest is destined to restrict further growth in the respective contract and discourages further off-exchange trading to move onto regulated markets.

We therefore strongly recommend omitting the proposal to add *"Where the deliverable supply is substantially higher than the total open interest, competent authorities shall determine the baseline figure for the spot month limit by calculating 25% of the open interest in that commodity derivative."* to Article 11 par. 1 and par. 4 and suggest maintaining the current regime.

> *Q.10: Do you agree with ESMA's proposal regarding Article 12 of draft RTS 21a?*

While we understand this approach would be a feasible way forward for gas and electricity contracts, we would like to caution that the same approach might not be appropriate for other asset classes. For example, like many other commodity markets, agriculture markets follow seasonal patterns. As there are years of high-yields and years of low-yields, a two-year reference period is advisable.

We therefore strongly recommend taking the same approach as proposed for determining the open interest figure in Article 14 of the draft RTS 21a, i.e. the NCA calculates deliverable supply "over a representative period of time" which would depend on the characteristics of the commodity derivative.

> *Q.11: Do you agree with ESMA's proposals regarding Article 14 of RTS 21a?*

We support the ESMA proposal to calculate open interest on a net basis, based on position reporting data.

On a related note, although not explicitly asked about, we believe that in Article 14 para 1 it should indeed be clear that in the case of two critical contracts that are based on the same underlying and that share the same characteristics "*Competent authorities shall calculate the net open interest in a commodity derivative by aggregating the number of lots of that commodity derivative that are outstanding* ***on trading venues*** *…*". In the case of two critical contracts that are based on the same underlying and that share the same characteristics, the single other month position limit that the competent authority will be responsible for according to MiFID II Art. 57 para 6 should indeed refer to the open interest of both venues.

We strongly support the proposal to calculate open interest "over a representative period of time" which would depend on the characteristics of the commodity derivative. This flexibility will help set the appropriate basis for determining a position limit. However, when it comes to Art. 14 para. 2, we believe the same flexibility is needed in special circumstances, such as trading moving from one venue to another due to a merger or from one contract to another due to an index transfer. As a matter of fact, it is notably in these special circumstances that sufficient flexibility should be granted for NCAs to determine a suitable and forward-looking "representative period of time".

Moreover, we consider that the current description to capture special circumstances is too narrow. For example, the upcoming German gas market merger is an event beyond the control of the trading venues, which leads to trading being transferred from two commodity derivatives to one commodity derivative newly admitted to trading on the same trading venue.

We therefore recommend that Art. 14 par. 2 is amended as follows:

"By way of derogation to paragraph 1, when trading in a commodity derivative is transferred from one ***or more*** *EU or third country trading venue****s*** *to an EU trading venue following* ***for example*** *a merger****, business transfer*** *or other corporate event or from one or more existing commodity derivatives* ***to one or more commodity derivatives*** *newly admitted to trading on the same trading venue* ***or in any other circumstances comparable to the before described events****, the competent authority shall calculate the open interest in that commodity derivative by taking into account the open interest on the former venue****s*** *or in the former commodity derivatives* ~~***for a six-month period***~~*. The competent authority shall then calculate the open interest in accordance with paragraph 1."*

> *Q.12: Do you see merit in the new approach considered by ESMA for new and less liquid agricultural commodity derivatives?*

Yes, we see merit in the new approach and strongly support the ESMA proposal. The suggested approach constitutes a very suitable way forward for new and less liquid agricultural commodity derivatives, which have a significant growth potential in Europe. Whereas the previous *de minimis* rule represented a very restrictive 25% baseline position limit when a growing contract neared 10,000 lots open interest, the new rule will reflect a 50% baseline which is considerably more suitable for such developing contracts.

> *Q.13: Do you agree with ESMA's proposal regarding Article 19 of RTS 21a?*

We welcome that Art. 19 par. 3 clarifies that where the open interest is significantly lower than the deliverable supply, NCAs shall adjust the other months' position limit upwards to avoid the risk of unduly constraining trading. However, as stated in our response to Q9, we consider it inappropriate to adjust the spot month position limit downwards in this case.

As many-exchange traded commodity derivative markets in Europe are still relatively illiquid compared to the total available commodity, it is a direct consequence that in these cases the deliverable supply is substantially higher than the open interest. Adjusting the spot month position limit downwards is unjustified for two main reasons:

1) A substantially higher deliverable supply does not mean that the market is more prone to market cornering. On the contrary, in these cases a substantially higher share of the trading is taking place outside the respective derivative contract, either on other trading venues or, more likely, outside the regulated environment. It would thus be close to impossible to squeeze a contract of which the open interest reflects only a small share of the overall market. The opposite reasoning would be more logical, i.e. in case that deliverable supply is substantially higher than open interest, an upwards review of the position limit of the other month contract would be needed.

2) It would penalise the spot month contract for the lack of development of the exchange-traded commodity market or, in case trading is already taking place at a competing regulated market, hamper the development of a newly introduced on-exchange contract. As a situation in which deliverable supply is substantially higher than open interest reflects a market with a substantial growth potential, a limit based on open interest is destined to restrict further growth in the respective contract and discourages further off-exchange trading from moving onto regulated markets.

As the consultation paper reads that in this case "the spot month is deprived of any effect", we would like to warn that the mere objective of a position limit cannot be to curb speculative trading. As a reminder, increased participation of speculators leads to better price discovery and less unwarranted price volatility. It is important to realise that although commodity futures markets are viewed as "hedging" markets, there is a vital role for speculators because there will not always be an even balance of short hedgers and long hedgers at any one time. Speculators are needed to balance the market. By taking on risk that other market participants wish to mitigate, they provide liquidity to the market and hence contribute to price discovery and market efficiency.

If spot month position limits of certain contracts are not breached, the immediate conclusion should not be that the spot month position limit is too high. But rather that there is sufficient deliverable supply to close out a position and hence no risk of market cornering.

As stated in our response to Q9 we believe that adjusting the spot month position limit downwards in this case is unjustified and risks forming an obstacle to further growth.

We therefore recommend amending Art. 19 par. 3 as follows: *Where the open interest is significantly lower than the deliverable supply, competent authorities shall adjust the other months' position limit upwards ~~and the spot month position limit downwards.~~*

> *Q14: Do you agree with ESMA' proposal regarding the upward adjustment factor to be used in case of a small number of market participants or less than three investment firms acting as market makers?*

Yes, we agree and support ESMA's proposal.

> *Q15: Do you agree with ESMA's proposed amendments to ITS 4?*

Yes, we share the analysis regarding the hedging exemption and liquidity provision exemption. Only the legal reference (RTS 21 -> RTS 21a) of the hedging field should be updated.

> *Q16: Do you agree with ESMA's suggestion to introduce such ongoing position monitoring requirement in the draft RTS?*

Please also refer to the introductory statement of the present response.

We generally support the proposal for exchanges to have arrangements in place for the ongoing monitoring of positions held by the end position holder. However, there is one important caveat. The new ESMA draft RTS on position management controls expands the scope of this Level 1 arrangement by adding "persons with close links", which effectively introduces a wider obligation whereby trading venues must also consider positions held by, for example, affiliates.

We are concerned that introducing a foreign concept in the commodity derivatives section of MiFID II will distort the consistency between the various components of the requirements applicable to commodity derivatives markets, including the position limit regime, the position reporting requirements and the position management controls.

Instead, the concept already present in the commodity derivatives section of MiFID II should be used. As part of their obligation under Art. 58 par. 3 market participants need to provide the trading venue with information about the position holder as well as its parent undertaking.

> *Q.17: Do you agree with ESMA's suggestion to introduce accountability levels as part of position management controls? Do you agree with ESMA's assessment that accountability levels would be of particular relevance for physically settled commodity derivatives?*

Please also refer to the introductory statement of the present response.

If ESMA were to maintain its proposal to require trading venues to set accountability levels in addition to the existing regulatory frameworks for the prevention of market abuse (e.g. MAR and REMIT), we believe that ESMA should at least introduce the necessary discretion for exchanges to determine which contracts to set those accountability levels for, which timeframe and whether to request additional information if an accountability level is exceeded. If not, the position management controls are likely to put a disproportionate compliance burden on both the exchanges' market surveillance departments and trading participants' compliance departments.

It is evident that financially settled contracts would not be in focus of such accountability levels. This is because in order to corner or squeeze a financially settled contract, one has to be able to manipulate the underlying reference price or index. As such indices in Europe are sufficiently robust, it is highly unlikely that market squeezes would ever occur in financially settled contracts.

However, many more parameters are important for assessing whether an accountability level for a commodity derivative contract would be appropriate and meaningful for market surveillance purposes. Other parameters to be considered include the amount of OTC trading versus on-exchange trading, the liquidity established in the respective futures contract, whether there are any potential constraints in the delivery capacity (i.e. the relative size of the deliverable supply) and whether a futures contract is price forming or its pricing is closely linked to a benchmark futures contract.

Furthermore, it is crucial to provide sufficient flexibility for exchanges to apply accountability levels for the appropriate timeframe of a contract. As market cornering only becomes possible a few days before the delivery of a contract, it would not be useful to set an accountability level for months ahead of delivery.

As the above-mentioned parameters are highly dependent on the characteristics of the market, we believe it is of utmost importance that trading venues are given the discretion to set the accountability levels in a manner they deem appropriate.

Moreover, we consider that such discretion would also be better aligned with the CFTC position management regime and the position management controls stipulated in Art. 57 para. 8 of MiFID

II which entrusts exchanges with powers rather than imposing highly prescriptive requirements on them.

In addition, we believe that these accountability levels should remain confidential and not be made public as these are internal controls used by the exchange for market surveillance purposes.

As also stated in our response to Q19, we agree that the methodology should be reviewed by the competent authority as proposed by ESMA in Article 3 of the draft RTS.

> *Q.18: In your view, how should accountability levels be set for the spot month and the other months? Based on which methodology or criteria? Should all types of positions count towards the accountability levels?*

As explained in more detail in our introductory statement as well as our response to Q17, Europex strongly warns against the introduction of a harmonised methodology for setting accountability levels by means of ESMA guidance, as it is unlikely to provide for sufficient granularity to be suitable for the broad variety of products trading venues offer for trading.

Europex does note that as market cornering only becomes possible a few days before the delivery of a contract, the timeframe for accountability levels should be set accordingly. In addition, as explained in our responses to Q9 and Q13, the only relevant parameter to look at from a market cornering perspective is deliverable supply.

> *Q.19: Do you agree with ESMA's suggestion to introduce requirements for the review of accountability levels? Do you also agree with ESMA's proposal regarding reporting requirements to the NCA on accountability levels?*

Yes, we agree with the suggestion and proposal.

Cost Benefit Analysis Questionnaire

> *CBA Q6: Is there any specific provision in the draft RTS on position management controls that you would expect to be a source of significant cost?*

Yes, Europex believes that the absence of sufficient discretion for the exchange to implement the position management controls in an appropriate manner and the extension of the position management controls to cover 'persons with close links' is likely to result in significant cost to the exchange and market participants.

Any breach of an accountability level would require the exchange to investigate and obtain a substantial amount of information from market participants. These mandatory information requests would come on top of the information requests that are an integral part of market surveillance processes. Exchanges will have to hire additional market surveillance staff to handle all investigations prompted by alerts and market participants will have to hire additional compliance staff to respond to all information requests.

The extension of the scope of the position management controls to cover 'persons with close links' would require new daily reporting arrangements between the exchange and their clients to be developed, as the information about affiliates covered under the 'persons with close links' requirement is not covered in existing MiFID II position reporting arrangements.

> *CBA Q7: Taking into account the size of your firm, would you qualify overall compliance costs with amended the draft RTS on position management controls as low, medium or high?*

Europex would qualify the estimated compliance costs with the draft RTS on position management controls as unreasonably high and disproportionate.

About

Europex is a not-for-profit association of European energy exchanges with 29 members. It represents the interests of exchange-based wholesale electricity, gas and environmental markets, focuses on developments of the European regulatory framework for wholesale energy trading and provides a discussion platform at European level.

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