



– Consultation Response –

Europex position on FCA commodity derivatives regime review

Brussels, 16 February 2024 | Europex welcomes the opportunity to respond to the FCA Consultation on reforming the commodity derivatives regulatory framework (CP23/27) and the proposal presented in the paper.

Q19: Do you agree with the information to be reported once the additional reporting requirement is triggered? If not, please explain why.

First, we would like to stress that trading venue operators already have the power to request the provision of additional information if they choose to do so. In the public consultation we understand, however, that there is an expectation that trading venues not only 'may' but in fact 'must' require the provision of additional information in relevant circumstances. We have a strong preference for the discretion (*may*) at the level of the trading venue instead of the obligation (*must*).

Second, we are concerned regarding the introduction of a formal requirement for market participants to report information on their positions in related OTC derivative contracts and related contracts traded on overseas trading venues to UK trading venues. There are two main issues with this proposal:

- **Competition Law.** For trading venues, information about the activity of market participants in the OTC market and on other trading venues represents information about their competitors. There is a significant risk that market participants and trading venues would breach:
 - antitrust law by reporting their positions on overseas trading venues to competitor UK trading venues; and
 - confidentiality restrictions with respect to disclosure of information from clients.

We believe that UK trading venues should not be legitimately able to obtain or use commercially sensitive information about their competitors' businesses. Likewise, there is a potential risk that, for specific overseas trading venues, market participants

may breach local regulatory requirements by reporting positions without the necessary authorisation from the relevant overseas regulator.

- **Practicality.** We also observe that the proposals do not specify a particular format for reporting additional information. Consequently, if trading venues adopt varied format requirements, market participants would need to establish different systems to ensure compliance. This is likely to impose a burdensome process, leading to operational complexity and increased compliance costs for market participants and their clearing members. Such a scenario could also reduce the international competitiveness of UK trading venues.
- We also note that the requirement on firms to ensure they would have “ready access” to such additional information, with respect to themselves and their clients, would require a level of preparation at client onboarding by clearing members on UK exchanges, which is not required elsewhere – the normal requirement is indeed that firms should require clients to co-operate and provide information when required, not that they have to have “arrangements in place to ensure ready access”.

We would therefore recommend instead adopting an approach similar to that practiced in the EEA under MiFID II and in the US, whereby trading venues have the option (but not the obligation) to ask for clarifications or additional information as part of its position management process. This would also decrease the risk of market participants avoiding UK trading venues for reasons of having a more onerous regulatory framework and trading partners avoiding entering into OTC transactions with counterparties that are a member of a UK trading venue and thus subject to the proposed rules. Such consequence would negatively impact both the ETD and OTC commodity market.

About

Europex is a not-for-profit association of European energy exchanges with 33 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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