



European Association representing the trade in cereals, rice, feedstuffs,
oilseeds, olive oil, oils and fats and agrosupply
Comité du commerce des céréales, aliments du bétail,
oléagineux, huile d'olive, huiles et graisses et agrofournitures

Ref. 17MAS07

Mr. Carsten Ostermann
Team Leader – Secondary Markets
ESMA
103 rue de Grenelle
75345 Paris Cedex 07
France

09 February 2017

Dear Mr. Ostermann,

I am writing to you on behalf of the EU collectors and traders of cereals, oilseeds, rice, feedstuffs and agro-supply in order to table some outstanding questions (see Annex I below) which remain pending following the publication by the European Commission of the draft MiFID RTS 20 on Ancillary Activity and which we believe should be subject to further clarification.

After checking with the relevant Commission services, we have failed to obtain clear answers to outstanding questions and following their advice we are now seeking ESMA's guidance.

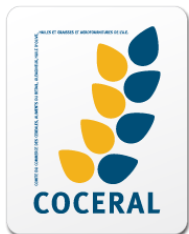
In order for the operators to be able to perform the calculations we need:

- To have answers to the questions provided in the annex below
- Visibility to market size data. We are extremely concerned about the lack of visibility to any market size data for the time being. The current ESMA consultation and the questions therein still suggest that there are fundamental questions regarding what will be included in the data which leads us to believe that there will still be many months until any data will be published.

It is critical for operators to have these questions further clarified in order for firms to be able to properly assess their status vis a vis MiFID and in view of its forthcoming implementation. For those firms which are unclear on whether they likely to fall above or below the threshold this is a very unsatisfactory situation.

On this basis it therefore seems to us critical that consideration is also given to issuing some **transitional provisions deeming non-financial firms active in commodity markets as preliminarily exempt, until sufficient time has passed to allow them to properly carry out the calculations.** We believe the guidance provided by ESMA in section 3 of the Q&A 'MiFID II and MiFIR transparency' with regards to systematic internalisers provides some precedent for this approach.

We take notice of the publication of the consultation paper on the 'Draft technical standards on data to be made publicly available by TRs under article 81 of EMIR' and recognize that some of the



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questions that we are raising in the context of RTS 20 overlap with areas that need to be clarified under EMIR . We will also be providing our collective answers to this consultation as a sector.

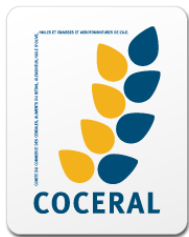
We are looking forward to receiving your response to the questions contained in this letter and would also appreciate a meeting with your services at your earliest convenience in order to have the opportunity to clarify our concerns further.

Kind regards,

Teresa Babuscio

Secretary General
COCERAL

COCERAL is the European association of trade in cereals, rice, feedstuffs oilseeds, olive oil, oils and fats and agrosupply. It represents the interest of the European collectors, traders, importers, exporters and port silo storekeepers of the above mentioned agricultural products. **COCERAL's** full members are 21 national associations in 15 countries and 1 European association [Unistock]. With about 3500 companies as part of **COCERAL** national members, the sector trades agricultural raw materials destined to the supply of the food and feed chains, as well as for technical and energy uses. COCERAL has 1 associated member in Switzerland and 2 European Associations (EUROMALT and EUROMAISIER). Gafta is an extraordinary member of COCERAL.



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ANNEX I

Sector Questions for ESMA on RTS 20

Art. 2 Market Size test – Numerator/Denominator questions – what must be included?

- First paragraph of Article 2.2. now refers to ‘a person’

The size of the activities referred to in Article 1 undertaken in the Union by a person within a group in each of the asset classes referred to in paragraph 1 shall be calculated by aggregating the gross notional value of all contracts within the relevant asset class to which that person is a party.

Does mean that the calculations need to be carried out at legal entity level or group level?

There has been some suggestions that it can now be interpreted to mean that the calculation should be carried out just at the individual person level.

COCERAL view: We don't believe this is consistent with the intention but it needs to be clarified

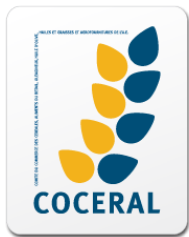
- We believe that there are a number of inconsistencies in the text regarding transactions to be included in the numerator and the denominator. We believe this needs to be clarified.

The numerator is defined in article 2.2 as taking into account the size of the activities undertaken in the Union

The size of the activities referred to in Article 1 undertaken in the Union by a person within a group in each of the asset classes referred to in paragraph 1 shall be calculated by aggregating the gross notional value of all contracts within the relevant asset class to which that person is a party

The denominator is defined under Article 2.3. to include all transactions traded on an EU trading venue plus any other contracts traded by an EU party

The overall market trading activity in each of the asset classes referred to in paragraph 1 shall be calculated by aggregating the gross notional value of all contracts that are not traded on a trading venue within the relevant asset class to which any person located in the Union is a party and of any other contract within that asset class that is traded on a trading venue located in the Union during the relevant annual accounting period referred to in Article 4(2).



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We believe that the points to be clarified are.

1. Are transactions done by EU entities on third country venues included? (eg. EU entity trading on CBOT)
2. Are ETD done by non EU group entities on EU venues included? (eg Swiss entity on ICE Europe)/ and is the answer dependent upon whether these are accessed through a non EU or EU clearing firm?
3. Are OTC transactions done by Non EU entities in the group with EU counterparties included?
4. Are OTC or ETD transactions done by Non EU entities in the group with non EU counterparties but relating to a European Commodity included? (eg CME European wheat contract)

These are important questions where different stakeholders have different views on and should therefore be explicitly clarified in ESMA guidelines

Art. 3- Capital test

There are also a number of inconsistencies regarding capital calculation.

- **European vs global:** There seems to be an inconsistency between 3.1a and 3.1.b. While the numerator for 3.1.a is only looking at transactions undertaken by the group in the EU, this is not clearly stated for 3.1.b. The denominator for both calculations is global.

COCERAL point of view: The calculations should be consistent and the numerator for both should be based on activities undertaken in the EU.

- **Contracts undertaken by authorized entities:** Article 3.4.makes clear that you can exclude from the 3.1.a calculation activities undertaken by financial (authorized) entities. However, this is not clearly stated with regards to 3.1.b, even though recital 13 is explicitly mentioning that they should be excluded

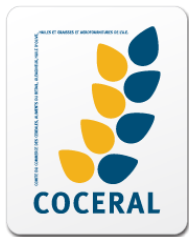
COCERAL point of view: this should be made clear as well with regards to 3.1.b

Article 4- Procedure for calculation

- Article 4.1 suggests that we need to do a daily calculation

“The calculation of the size of the trading activities and capital referred to in Articles 2 and 3 shall be based on a simple average of the daily trading activities or estimated capital allocated to such trading activities, during three annual calculation periods that precede the date of calculation. The calculations shall be carried out annually in the first quarter of the calendar year that follows an annual calculation period.”

COCERAL view- this requirement imposes a heavy burden on non-financial operators and we believe the objective could be accomplished with a less frequent calculation ie. Monthly or quarterly.



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- Article 4. 1 states that the calculations are carried out annually in the first quarter of the calendar year that follows an annual calculation period.

“The calculation of the size of the trading activities and capital referred to in Articles 2 and 3 shall be based on a simple average of the daily trading activities or estimated capital allocated to such trading activities, during three annual calculation periods that precede the date of calculation. The calculations shall be carried out annually in the first quarter of the calendar year that follows an annual calculation period.”

COCERAL view - In the event that a firm, after carrying out the calculation, finds that it doesn't qualify for the exemption, there needs to be a transitional period to allow the firm time to reorganize or establish an authorized entity, which is not currently considered in the rule. This is in particular an issue for the initial period whilst there is no visibility to any market size data.

- Article 4.3. states that status will be determined based on the historical activities of a firm

“For the purpose of paragraph 1, the calculation of the size of trading activities or estimated capital allocated to trading activities taking place in 2018 shall take into account the three preceding annual calculation periods, starting on 1 January 2015, 1 January 2016 and 1 January 2017, and the calculation taking place in 2019 shall take into account the three preceding annual calculation periods, starting on 1 January 2016, 1 January 2017 and 1 January 2018”.

COCERAL view- there needs to be provision to allow for business changes or restructuring which result in future activities being quite different to past activities, to qualify for the exemption. This is in particular important in the initial calculation phase (ie. prior to 2018)
