

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

**Commissioner Jonathan Hill**  
European Commission  
Rue de la Loi / Wetstraat 200  
1049 Brussels  
Belgium

Brussels, 12 April 2016

Dear Commissioner Hill,

I am writing to you to express the views of EU grains collectors and traders (COCERAL) on the recent developments concerning MiFID, in light of the exchange of letters between DG FISMA and ESMA.

We have been previously in contact with your Cabinet as well as DG FISMA on this matter and we felt it important to write to you again in order to highlight our views regarding the issues raised by the Commission in its latest letter to ESMA as well as to stress the importance of some additional changes/clarifications needed in order to avoid adverse consequences for the European agricultural markets.

## **RTS 20 – Ancillary Activity**

### **1. Main business test**

COCERAL is in agreement with the approach taken by DG FISMA regarding the necessity of considering a wider range of factors when determining the extent to which activities constitute a minority of activities at a group level.

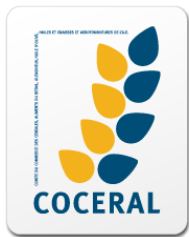
We concur with DG FISMA that the trading ratio proposed by ESMA in order to determine when an activity constitutes a minority of activities is not the appropriate test for all cases and for all groups potentially affected by the Ancillary Activity test and that a group's total transaction volume in commodity derivatives is not necessarily an accurate reflection of the main activity undertaken by that group.

As highlighted in DG FISMA's letter to ESMA, Capital Employed is indeed an important parameter which was already referenced to in Article 2 (4) of Directive 2014/65/EU as a viable way for carrying out the main business test.

**COCERAL strongly supports this view and calls for the reintroduction of the capital test as an alternative/option to ESMA's proposed Main Business Test for firms who believe it is a more appropriate approach to reflect the specificity and diversity of their activities.**

### **2. Other aspects of RTS 20**

- COCERAL supports the stance of DG FISMA in asking for a cautious approach in **calibrating the regime in the initial years** and that ESMA shall assess the functioning of the ancillary test on the basis of data reported once after the MiFID II enters into force.
- As we have highlighted previously, COCERAL believes that there are significant issues with the **definitions** used in ESMA's proposed Ancillary Activity Exemption tests (main business test and market size test) which we believe are important to address as part of the RTS revision, in



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particular in relation to the **treatment of transactions on European markets by non-EU entities and transactions on non-EU markets by EU entities.**

- It is also important that the **definition of hedging** reflects the reality of prevailing practices in terms of bona fide hedge positions - as a widely accepted approach on other major commodity derivative markets - without having to evidence them transaction by transaction.

## **RTS 21- Position limits**

### **1. Spot and Other Months' Limits**

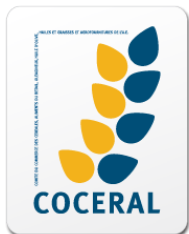
COCERAL has reservations as to the approach taken by the European Commission in DG FISMA's letter to ESMA on the Spot and other months' limits.

**We strongly disagree that certain agricultural commodities should attract a lower limit, neither for the spot month nor for the other months' limits.**

- While we recognise that changes are required under level I text, we believe that the current position limit framework has generally worked effectively
- While we understand the political sensitivity surrounding this debate, it is important to note that volatility and price moves is an inherent characteristic of agricultural markets where fluctuations in supply are amplified by the rigidity of the demand. As a result, a small fluctuation in supply can lead to a variation more than proportional in price. And this all because of fundamentals, not due to speculation.
- In order to properly function, future markets need liquidity which is granted by financial participants being ready to take on the risk that physical players are willing to lay off.
- For a number of commodities, the European markets are not even the most important or relevant on a global basis. Therefore imposing a strict position limit regime over relatively small markets may have damaging impact on these and result in less effective hedging opportunities for European crops. So while we understand the sensitivities surrounding this debate regulators should be mindful of unintended consequences of measures which will not necessarily have an impact on price volatility.
- We do agree with the European Commission that contracts with fewer participants need to have higher maximum limits, in order to ensure adequate functioning and sufficient liquidity.

### **3. Other points in RTS 21**

- **COCERAL is in firm belief that the Spot Month Position Limits should be based on a percentage of deliverable supply. Other month's limits should be based on open interest.**
- We further believe that the current definition of spot month contract in the RTS should be revised to make clear that spot month limit applies only as the contract enters the delivery period. Applying a tight spot month limit for an extended period prior to delivery obligations would inhibit the ability of orderly settling markets and will have the effect of constraining legitimate trading activity. A definition of spot month that is limited to a short period before expiry is already applied in other jurisdictions such as the US, under the regime established by the CFTC, as well as in France and UK where the main future exchanges are located.



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- We furthermore support a cautious approach in calibrating the level of limits in the initial years to allow and ESMA and the NCAs shall assess the functioning of the regime and its effect on liquidity of the markets.

COCERAL asks the European Commission to consider the abovementioned comments of the EU agricultural operators, in order to reach a well-functioning regulatory framework, which would satisfy the nature of the MiFID II in limiting price volatility and to avoid adverse consequences for the European agricultural market. We thank you for your consideration and remain available to provide any additional information.

Yours Sincerely,

**Teresa Babuscio**  
**COCERAL Secretary General**

**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 26 national associations in 18 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 two associated members in Switzerland and Serbia and one extraordinary member Gafta.