

Consultation on the amendments to certain technical standards for commodity derivatives

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1. – Target participants

This consultation paper is primarily of interest to trading venues, investment firms and non-financial counterparties trading in commodity derivatives, but responses are also sought from any other market participant including trade associations, industry bodies and investors.

2. - Information Note

On 28 February 2024, the European Parliament and the Council adopted Directive (EU) 2024/790 amending Directive 2014/65/EU on markets in financial instruments (the amending Directive), which was published in the Official Journal on 8 March 2024. The new provisions will start applying on 29 September 2025, after transposition into national law by Member States.

The amending Directive introduces changes to some of the MiFID II provisions regarding commodity derivatives. In particular, the revised Article 57 of MiFID II extends position management controls to trading venues which trade derivatives on emission allowances, while the revised Article 58 of MiFID II amends the scope of position reporting by excluding emission allowances and introduces a new obligation to report two weekly positions reports, one of which excluding options.

These changes require the revision of Commission Delegated Regulation (EU) 2022/1299 (RTS on position management controls thereafter), Commission Implementing Regulation (EU) 2017/1093 (ITS 4 thereafter) as well as the article on position reporting in Commission Delegated Regulation (EU) 2017/565 (CDR 2017/565 thereafter).

ESMA is publishing this consultation paper (CP) covering all the key changes to the technical standards linked to the MiFID II review for commodity derivatives and seeks stakeholders' views on the proposed amendments.

The ESMA mandates in MiFID II covering the above referenced RTS and ITS have not been amended together with the revision of MiFID II. Therefore, there is no explicit deadline for ESMA to deliver to the European Commission the final proposals with amendments to the RTS on position management control, ITS 4 and CDR 2017/565. However, the implementation of the Level 1 amendments relies on specifications to be made in the relevant Level 2 measures. In addition, the changes to ITS 4 (mainly, the publication of two weekly reports instead of one) impact the IT systems which cater for the publication of the weekly reports, with IT developments for trading venues and ESMA. Moreover, contrary to MiFIR, there are no transitional provisions in MiFID II,

and all changes to MiFID II will apply at the end of the transposition period. Therefore, ESMA considers it is beneficial to consult as early as possible on the amended technical standards.

Section 2 of the CP deals with the proposals for amending the RTS on position management controls to include in the scope trading venues which trade derivatives on emission allowances.

Section 3 of the CP presents the proposed amendments to ITS 4 and suggestions for the European Commission for amending CDR 2017/565, related to position reporting.

The draft legal texts resulting from the proposals discussed in the CP are provided in Annex I and Annex II.

Considering that the proposed changes to the RTS on position management controls are a direct consequence of the change in MiFID II and are expected to have a very limited impact on market participants, ESMA deems it highly disproportionate to carry out a cost-benefit analysis.

With respect to the changes to ITS 4, most of the changes are a direct consequence of changes in the legal text and have been carefully developed to minimise the burden on reporting entities. The changes proposed by ESMA on its own initiative are developed in Section 3.2.1.3 and 3.2.1.4 and the costs and benefits are analysed in this section.

Respondents to this consultation are encouraged to provide relevant information, in particular quantitative data, to support their arguments or proposals.

Based on the responses and feedback received to this CP, ESMA will prepare a final report for submission to the Commission.

3. - Submission of comments

The deadline for submitting comments is **23 August 2024**.

Respondents may send their comments through this link to [ESMA's website](#) where the consultation paper and the response form are available.

Likewise, please send a copy of your answers to the CNMV to the following email address: documentosinternacional@cnmv.es

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