|  |  |  |  |
| --- | --- | --- | --- |
| **Question** | **Page Number in CP** | **Question** | IOGP Response |
| Q 168 | CP509 | **Do you agree with the approach suggested by ESMA in relation to the overall application of the thresholds?** | IOGP is concerned ESMA’s approach to the calculation of thresholds to determine whether a person is undertaking investment services or activities on an ancillary basis within the meaning of Article 2(1)(j) of Directive 2014/65 on markets in financial instruments [MiFID II] represents a departure from the approach set outlined in the Discussion Paper. Furthermore, it appears to go beyond the intent of Level 1.  We understood the exemption contained in Article 2(1)(j) was designed to ensure that a non-financial firm providing investment services or undertaking investment activities on an ancillary basis to the main activity of their group is able to do so in a way that does not result in disproportionate application of MiFID II and associated requirements under EMIR and CRR.  There is a risk that by revising the methodology and setting impractical thresholds ESMA will narrow the scope of Article 2(1)(j) beyond the intent of Level 1.  Article 2(1)(j) does not limit or otherwise prescribe that investment services or activities performed or undertaken by the non-financial firm must be for the exclusive purpose of risk management or hedging. However, the proposed methodology will clearly impose such limitations.  With unnecessarily low thresholds, few market participants will be able make use of the exemption. Consequently, companies able to rely on Article 2(1)(b), risk the application of CRR/CRD IV upon expiration of the exemption in Article 498(1) CRR on 31 December 2017.  Should this chain of events unfold to the point that IOGP members are subjected to capital requirements designed for financial institutions the consequences would be significant. CRR and CRDIV are designed to set aside significant amounts of capital. However, IOGP members are asset heavy physical energy companies. Our investments are in the fields of exploration and production, research and technology. To unnecessarily divert capital away from these core activities should not be allowed to happen through unintended consequences from the complex patchwork of financial regulations. |
| Q169 | CP514 | **Do you agree with ESMA's approach to include non-EU activities with regard to the scope of the main business?** | IOGP is in agreement with this proposal and should encapsulate both EU and non-EU activities of a group. |
| Q170 | CP514 | **Do you consider the revised method of calculation for the first test (i.e. capital employed for ancillary activity relative to capital employed for main business) as being appropriate? Please provide reasons if you do not agree with the revised approach.** | IOGP is broadly in agreement that capital employed for ancillary activity relative to the capital employed for the main business is an appropriate test. However, we have are concerned that the revised methodology to determine the numerator is inappropriate.  Please see our response to Question 172 for further details. |
| Q171 | CP514 | **With regard to trading activity undertaken by a MiFID licensed subsidiary of the group, do you agree that this activity should be deducted from the ancillary activity (i.e. the numerator)?** | Further to our response to Questions 170 and 172, IOGP has concerns on ESMA’s revised methodology to calculate the numerator. If the revised methodology remained unchanged, it is essential that any activity undertaken by a MiFID II licensed subsidiary is deducted from the numerator. |
| Q172 | CP514 | **ESMA suggests that in relation to the ancillary activity (numerator) the calculation should be done on the basis of the group rather than on the basis of the person. What are the advantages or disadvantages in relation to this approach? Do you think it would be preferable to do the calculation on the basis of the person? Please provide reasons. (Please note that altering the suggested approach may also have an impact on the threshold suggested further below).** | IOGP is opposed to ESMA’s proposed revised methodology to determine ancillary activity (the numerator) on the basis of capital employed for MiFID II activity at group level in the EU.  IOGP contends that ancillary activities (the numerator) should be calculated on the basis of the capital employed for eligible activities by the **person** seeking to rely on the exemption rather than the capital employed by the group for such activities. This is consistent with ESMA’s own contention in paragraph 38 of the Consultation Paper which states:  “The test will include a comparison of the capital employed by the **person** seeking the exemption for trading activities undertaken in the EU for non-hedging purposes on the one hand and the capital employed for the overall activity undertaken by the whole group globally on the other hand” [emphasis added]  ESMA’s proposal to calculate the numerator at a group level introduces unnecessary complexity and uncertainty for firms undermining its value as a reliable measure of ancillary activity.  IOGP recommends that ESMA revert to a methodology based on the ancillary activity of the person seeking exemption. This could be expressed as:  **Capital employed by the person for eligible activity in the EU – capital employed for privileged transactions**  **Capital employed for the main business of the group on a global basis**  This approach would provide greater clarity and ease for firms to make the calculation. It would align the methodology with the purpose and subject of the exemption removing uncertainty as to whether breaching the threshold by one entity within a group triggers a licensing obligation for all entities undertaking eligible activity.  Furthermore, it is necessary for ESMA to expand with greater clarity and explanation what it considers to be ‘eligible activity in the European Union’. |
| Q173 | CP516 | **Do you consider that a threshold of 5% in relation to the first test is appropriate? Please provide reasons and alternative proposals if you do not agree.** | IOGP is concerned that the proposed threshold level is far too low and is unjustified in versus the intent of co-legislators at Level 1.  In Recital 20 MiFID II the stated purpose of Article 2(1)(j) is to “ensure that non-financial firms dealing in financial instruments in a disproportionate manner compared with the level of investment in the main business” are subject to MiFID II.  The suggested threshold is a significant shift away from ESMA’s initial policy thinking expressed in the Discussion Paper. ESMA justification does not appear to be supported by any credible evidence or cost-benefit analysis and overlooks the point made in the Consultation Paper notes “most respondents support setting the threshold close to 50%”.  If applying test on the basis of capital employed for ancillary activities at a group level, IOGP considers a more appropriate and proportionate threshold to be at least 20% of capital employed by the group for its main business. |
| Q174 | CP517 | **Do you agree with ESMA's intention to use an accounting capital measure?** | IOGP broadly supports the principle of using accounting measures. |
| Q175 | CP517 | **Do you agree that the term capital should encompass equity, current debt and non-current debt? If you see a need for further clarification of the term capital, please provide concrete suggestions.** | IOGP broadly supports the use of equity, current debt and non-current debt as the principal measure for determining what constitutes capital employed. However, it is not possible to use such a measure to determine the capital employed for privileged transactions nor when seeking to calculate capital employed by one entity in respect of eligible activities undertaken by an affiliate within the same group.  A more appropriate measure to determine capital employed for privileged transactions would be a working capital measure based upon the sum of the following elements:   1. mark-to-market exposures of uncollateralised OTC derivatives; 2. accounts payables/receivables; and 3. margin held against relevant exchange-traded and OTC derivatives. |
| Q177 | CP519 | **Do you agree that the calculation in relation to the size of the trading activity (numerator) should be done on the basis of the group rather than on the basis of the person? (Please note that altering the suggested approach may also have an impact on the threshold suggested further below)** | IOGP is concerned that ESMA’s proposals to apply the numerator is on the basis of the group rather than the person.  Please see our comments in our response to Question 172 also applicable in respect of the size of trading activity calculation.  IOGP recommends ESMA revert to a methodology that measures the relevant trading activity of the **person** seeking to rely on the exemption. |
| Q178 | CP520 | **Do you agree with the introduction of a separate asset class for commodities referred to in Section C 10 of Annex I and subsuming freight under this new asset class?** | IOGP is concerned that a separate asset class for Freight has the risk of creating a market that is too small. We would recommend the inclusion of freight within the asset class of the commodity being transported. |
| Q179 | CP522 | **Do you agree with the threshold of 0.5% proposed by ESMA for all asset classes? If you do not agree please provide reasons and alternative proposals.** | IOGP does not agree with this approach. The ancillary activity threshold test is far too low. Indeed, it renders the exemption worthless.  If ESMA continues on this path it will capture all non-financial entities that are engaged in financial markets beyond the privileged transactions. By any assessment this is disproportionate and goes far beyond the intention of MiFIDII Level 1 text.  We believe a ‘one-size-fit-all’ threshold of 0.5% for energy commodity asset classes listed by ESMA, is unreasonably and disproportionate. ESMA fails to provide evidence on how this threshold is meant to meet such a requirement. Whilst the co-legislators intent was to narrow down the existing exemption it was surely not but not render it obsolete – if that had been the intention it surely would have been deleted from the text entirely.  Regarding the capital employed test, ESMA does not appear to have proposed threshold levels using market data or following an impact assessment. Given the severity of the impact this is unacceptable.  A consequences of ESMA’s current proposals would see large numbers of energy trading firms being regulated as financial entities, subject to detailed oversight by financial regulators and forced to comply with onerous and costly rules on licensing requirements, clearing and margining, capital and liquidity adequacy.  As a consequence:   * Many energy firms may exit the market due to prohibitive compliance and prudential capital and liquidity requirements. Firms may have to arbitrarily limit their business to avoid the significant capital requirements placed on their business; * Trading activity will, wherever possible, be routed via other international markets to avoid disproportionate licensing and capital costs. Trade will also migrate to purely bilateral, physical markets and products. Trading entities may seek to move outside of the European Union; * Despite the need for increased liquidity in many European energy and commodity markets (e.g. the European Internal Energy Market) liquidity will dry out. The fall in liquidity will significantly increase the costs of risk management for energy companies and massively reduce opportunities for commodity risk management by industrial customers, resulting in competitive disadvantages for European industry and the wider European economy; |
| Q180 | CP523 | **Do you think that the introduction of a de minimis threshold on the basis of a limited scope as described above is useful?** | IOGP is in agreement that yes, this could be useful. However, the level should be raised as a consequence of a different approach as suggested in response to Q179.  We believe the de minimis threshold should be set at a more reasonable level in the range, e.g. at the 50% of the level of the threshold for the market size test and in any case at least at 5%. |
| Q181 | CP525 | **Do you agree with the conclusions drawn by ESMA in relation to the privileged transactions?** | We broadly support ESMA’s proposals. However, In the draft RTS, “intragroup transactions” are defined by reference to Article 3 of EMIR.  Under this Article, in order for an EU counterparty to qualify a contract with another counterparty in the same group that is established in a third country, it is required that the Commission has adopted an implementing act to deem that third country as being equivalent under EMIR Article 13(2).  In the absence of such equivalence assessments, and due to the uncertainty over when such assessments might eventually be made, we consider it appropriate to define an “intragroup” transaction as a transaction between two counterparties belonging to the same group, maintaining a generic reference to the term group consistent with the text of Level 1 and the need to avoid extraterritorial application of MiFID II, as expressed by ESMA in the consultation paper at point 30.  Furthermore we recommend to exclude trading activity in relation to carbon EU-ETS compliance. |
| Q182 | CP527 | **Do you agree with ESMA's conclusions in relation to the period for the calculation of the threshold? Do you agree with the calculation approach in the initial period suggested by ESMA? If you do not agree, please provide reasons and alternative proposals.** | IOGP does not support the period proposed by ESMA. The proposals are simply impractical.  For example, requiring the use of average data for 2016 will be difficult if not impossible. Average data for 2016 will only be available once 2016 has come to an end, i.e. on 2 January 2017 (since 1 January 2017 is a bank holiday in most if not all EU jurisdictions). MiFID II applies from 3 January 2017. However, accounting data for firms is only audited and published within the first half of the year following the account closing date.    It will be difficult to acquire data of the balance sheet of a group (for calculation of the first test) in 2 days after the end of the year.  Better to calculate the data either on the basis of the overall year or the calculation of the outstanding value on the 31/12 of the year. |
| **Position limits** | | | |
| Q183 |  | **Do you have any comments on the proposed framework of the methodology for calculating position limits?** | IOGP observes that the exact methodology has yet to be further defined by the NCA around the setting of the position limits for individual contracts in a particular asset class and that the baseline figure of 25% of deliverable supply with the +/-15% parameters is the only factor has been explored in further detail, it is difficult to provide detailed comment without knowing how other factors will be weighted (i.e. contract maturity, characteristics of the underlying commodity markets etc.).  We believe it would be helpful for ESMA to provide detail on the deliverable supply for key commodity asset classes so as to provide a steer to market participants as to whether or not the 25% figure proposed is appropriate.  We recommend ESMA requests exchanges to start developing an outline of methodologies currently in place for establishing position limits for different commodities and types and contract such that ESMA can take into consideration the complexities behind each market and that the final methodology needs to be more flexible to account for this. |
| Q184 |  | **Would a baseline of 25% of deliverable supply be suitable for all commodity derivatives to meet position limit objectives? For which commodity derivatives would 25% not be suitable and why? What baseline would be suitable and why?** | IOGP consider that the proposal for using a baseline of 25% of deliverable supply is not a suitable metric for the position limit for each commodity derivative for both the spot month limit and the limit for other months further down the curve.  We do support with the use of deliverable supply as the metric for the spot month contracts only.  IOGP is concerned that different asset classes be treated with appropriate differentiation otherwise there is the risk of unhelpful and potentially damaging arbitrary position limits.  For example, we anticipate that for gas, it will be necessary to look at the level of natural gas production; how much is available for delivery; the delivery capacity of the delivery facility; and information around the storage facilities.  Furthermore, we would like to raise the question of whether or not the issue of deliverable supply will be looked at on an exchange-by-exchange basis? E.g. ICE Gasoil Futures, upon reaching expiry, alternative delivery mechanisms can be invoked which would then have an effect on the deliverable supply available.  We also observe that it is important to consider the concept of deliverable supply and how it will be applied to markets, such as BFOE, a dynamic and highly fungible market.  It is unclear where delivery actually starts.  Proposing a baseline figure of 25% of deliverable supply to be applicable to both the spot month and forward months further down the curve is inappropriate as using deliverable supply as the metric for determining the position limit for the months further down the curve raises concerns around lower liquidity.  For the majority of contracts, the further along the curve from expiry, the depth of liquidity falls such that application of a position limit is could be damaging as it may further reduce the already limited number of active market participants.  Further, this may artificially constrain any potential growth in liquidity for the small number of traded contracts. Deliverable supply further down the curve, e.g. 4-5 years ahead, is also likely to be adversely affected.  IOGP suggests one of the following alternative solutions to deliverable supply for months other than the spot month:   * Using open interest as the baseline metric for the forward months further down the curve; or * Having two different measures of deliverable supply – a slightly lower figure for the spot month and a higher one for months thereafter; or * Having position accountability levels instead of hard position limit for non-spot months to only target excessive speculative activity. |
| Q185 |  | **Would a maximum of 40% position limit be suitable for all commodity derivatives to meet position limit objectives. For which commodity derivatives would 40% not be suitable and why? What maximum position limit would be suitable and why?** | Please refer above to our response to question 184. Furthermore, it may not be appropriate in all markets, especially if they are emerging markets, which can be especially illiquid.  In such circumstances, exceptions should be allowed, as a small number of participants may be required to represent a proportionately higher share of the market (for example in the helium market) until such time as the market is more established and lower limits can be used. The methodology should be future-proofed to avoid undue constraints in the development of commodity derivative markets. |
| Q186 |  | **Are +/- 15% parameters for altering the baseline position limit suitable for all commodity derivatives? For which commodity derivatives would such parameters not be suitable and why? What parameters would be suitable and why?** | It is difficult to assess without the figures of deliverable supply and open interest estimates for each of the relevant markets. |
| Q187 |  | **Are +/- 15% parameters suitable for all the factors being considered? For which factors should such parameters be changed, what to, and why?** | Please refer above to our response to question 184. |
| Q188 |  | **Do you consider the methodology for setting the spot month position limit should differ in any way from the methodology for setting the other months position limit? If so, in what way?** | Yes – we believe that there should be different methodologies for setting the spot month position limit and for setting non-spot month limits. As mentioned in our above response to question 184, we would consider deliverable supply to be a suitable metric for the spot month, but less so for the months further down the curve.  Instead, we believe the following are more appropriate metrics to use for these less liquid contract months:   * Using open interest as the baseline metric for the forward months further down the curve; or * Having two different measures of deliverable supply – a slightly lower figure for the spot month and a higher one for months thereafter; or |
| Q189 |  | **How do you suggest establishing a methodology that balances providing greater flexibility for new and illiquid contracts whilst still providing a level of constraint in a clear and quantifiable way? What limit would you consider as appropriate per product class? Could the assessment of whether a contract is illiquid, triggering a potential wider limit, be based on the technical standard ESMA is proposing for non-equity transparency?** | IOGP believes that ESMA should ensure that a methodology is established whereby there is a degree of flexibility that accounts for the fact that new contracts are likely to be relatively illiquid when they first begin to be traded, and thus the very few participants at that point will represent the majority of the number of contracts. If the position limit has been set too low, it is likely that this will constrain liquidity growth from the outset and hinder the increase of participants.  However, we would like to highlight that whilst illiquidity is often associated with new contracts, it is also an aspect of many longstanding existing contracts as well that are perhaps more niche and specialist in nature. As such we call on ESMA to shed some light on what the intention is for existing illiquid contracts that will be subject to a new position limits regime.  As to whether the ESMA-proposed technical standard for non-equity transparency could serve as a basis for determining whether a contract is liquid, we would consider that for the sake of consistency that this should be used as a foundation on which to determine the liquidity of a contract.  However, we believe that further refinements should be made to improve on the existing proposed RTS covering energy commodity derivatives. In particular, we note that for the oil markets, the data used as the basis for the liquidity test has been based on transactions pertaining to a limited number of instruments and are denominated in the Romanian Leu.  We consider that a more appropriate measure, given the relative size of the market, not just within the EU but in a global context, would be to look at instruments relating to Brent that are traded on the ICE Futures Europe exchange instead. On a more general basis, we would note that a test for liquidity should ultimately consist of a higher threshold – as is currently stated in this Consultation Paper, for energy commodity derivatives, “an average of 1 trade per day or more and; an average notional amount per day of €100,000 or more” will amount to a sub-class as being liquid. We believe that this should be revised to increase the amount of trading activity that should be accounted for in the liquidity test. |
| Q190 |  | **What wider factors should competent authorities consider for specific commodity markets for adjusting the level of deliverable supply calculated by trading venues?** | IOGP would like to bring to ESMA’s attention the fact that there are a number of factors specific to the different asset class markets that need to be taken into consideration by NCAs when adjusting the level of deliverable supply calculated by trading venues.  In our opinion, we believe that contract specifications play a critical role as to how some sizes of market positions are built. We also consider logistical capacity constraints around both physical delivery and storage/warehousing capacity to be equally important elements that need to be factored into the methodology. |
| Q191 |  | **What are the specific features of certain commodity derivatives which might impact on deliverable supply?** | We have noted that there are some specific features of the underlying commodities that are highly likely to have an impact on deliverable supply. We believe that seasonal supply shortages/outages are a critical factor on deliverable supply, for example, for the Brent oil market, there is a scheduled summer maintenance period whereby oil companies undertake annual infrastructure work on their platforms and pipelines, and BFOE output tends to fall as a result of this activity. This is an event which the market expects each year and is generally considered as a seasonal supply factor. We also believe that the perishability of certain commodities is also a factor that may have an impact on deliverable supply, for example, the calorific value of coal starts to deteriorate after a period of three months. |
| Q192 |  | **How should ‘less-liquid’ be considered and defined in the context of position limits and meeting the position limit objectives?** | We would recommend any methodology takes into account a range of factors in assessing market liquidity including (but not restricted to) – bid/offer spread, number of participants, frequency of trading, market volatility, etc.  Also, please refer above to our answer to question 189. |
| Q193 |  | **What participation features in specific commodity markets around the organisation, structure, or behaviour should competent authorities take into account?** | We believe that NCAs should take into account the fact that there are already in place, position management powers that can be exercised by trading venues, particularly surrounding the size of positions that can be held by market participants in the run up towards expiry.  For example, on the ICE Brent Futures market, where participants are nearing the limit in the run up to expiry, there will be interference from the exchange to enquire as to the physical positions that are also being held by the market participant, so as to prevent any potential abusive squeezes taking place.  We also feel that the NCAs should consider looking at both the distribution and composition of the participants so as to gain a better understanding of the context in which the position limit will be applied to a particular market, [in a similar approach to that of the CFTC]. |
| Q194 |  | **How could the calculation methodology enable competent authorities to more accurately take into account specific factors or characteristics of commodity derivatives, their underlying markets and commodities?** | Please refer above to our response to question 193 |
| Q195 |  | **Should the application of less-liquid parameters be based on the age of the commodity derivative or the ongoing liquidity of that contract.** | We believe that the ongoing liquidity should apply, as opposed to the age of the commodity derivative. In our opinion, the age of the contract is merely an arbitrary factor. There are currently plenty of existing contracts whose underlying markets are relatively illiquid and are unlikely to even require a position limit to be put in place. If ongoing liquidity was used instead, it would at least allow for a justifiably suitable threshold to be in place. |
| Q197 |  | **Do you have any further comments regarding the above proposals on how the factors will be taken into account for the position limit calculation methodology?** | No. |
| Q198 |  | **Do you agree with ESMA’s proposal to not include asset-class specific elements in the methodology?** | IOGP supports the proposal from ESMA to not include asset-class specific elements in the methodology and that the methodology should provide the NCAs with sufficient scope to take into consideration the specific elements relating to the different markets without incorporating asset-class specific elements in it. |
| Q199 |  | **How are the seven factors (listed under Article 57(3)(a) to (g) and discussed above) currently taken into account in the setting and management of existing position limits?** | We believe these factors would be taken into account through the use of open interest for non-spot month limits and deliverable supply for spot month limits. |
| Q200 |  | **Do you agree with the proposed draft RTS regarding risk reducing positions?** | Regarding the proposed draft RTS regarding risk reducing positions, we do not agree that these are formulated in the best way that will promote stability and robustness in these markets. We believe that if the hedging exemption will only be applicable to non-financial entities, this may result in increased market volatility as financial entities who are no longer able to avail of the hedging exemption, will have to close out a vast number of positions so as not to trigger a breach of a position limit. If financial entities are subject to what may be a particularly stringent position limits regime, with an inability to offset any risks that may be related to any positions being held, then a highly probable outcome will be for such participants to consider moving their trading activity to a non-EU market instead. |
| Q201 |  | **Do you have any comments regarding ESMA’s proposal regarding what is a non-financial entity?** | The outcome of the ancillary activity test is a key determinant as to whether or not a market participant will fall within the scope of the MiFID regime and thus be considered as a financial entity. As it is currently structured, it is likely that this test will capture a number of firms, previously not required to be regulated pursuant to MiFID II. This will result in a scenario whereby such firms will be unable to avail of the hedging exemption that will only be open to non-financial entities.  Please also refer to our response to questions on ancillary exemptions. |
| Q202 |  | **Do you agree with the proposed draft RTS regarding the aggregation of a person’s positions?** | IOGP broadly supports. We support the view that positions of a person should not be aggregate with position of other subsidiaries of a mutual parent.  However we disagree that the positions should be aggregated on a whole position basis, they should be rather done on a pro-rata basis otherwise certain positions would be counted twice. |
| Q203 |  | **Do you agree with ESMA’s proposal that a person’s position in a commodity derivative should be aggregated on a ‘whole’ position basis with those that are under the beneficial ownership of the position holder? If not, please provide reasons.** |  |
| Q204 |  | **Do you agree with the proposed draft RTS regarding the criteria for determining whether a contract is an economically equivalent OTC contract?** | In the RTS, ESMA has stated that a contract will be deemed to be an EEOTC, if it is at least economically equivalent; is traded under or with reference to the same set of trading venue rules and creates a single fungible pool of open interest; and has “other equivalent properties, such as requiring the same underlying commodity for settlement.” It is this latter limb of the criteria which we believe requires further clarification. ESMA should be alert to a possibility that contracts could be altered/drafted in such a way that they are no longer deemed to be economically equivalent or have the same equivalence in other contractual properties. There is also a lack of clarity about how, or if, this criteria should be applied to contracts traded on a third country trading venue. To illustrate this point, under the criteria currently stipulated in the RTS, would a NYMEX Brent Futures contract be considered economically equivalent to an ICE Brent Futures contract? |
| Q205 |  | **Do you agree with the proposed draft RTS regarding the definition of same derivative contract?** | IOGP agrees with the proposed draft RTS regarding the definition of same derivative contract on the basis that “same” is a subset of economically equivalent and that a contract is to be regarded as “the same” if it is at least economically equivalent and has other equivalent properties. |
| Q206 |  | **Do you agree with the proposed draft RTS regarding the definition of significant volume for the purpose of article 57(6)?** | IOGP believes that the draft RTS definition in its current form, proposing that more than three lots of open interest in the same commodity will constitute significant volume, is set far too low, particularly if it is to be applied across all commodity classes of contracts. We believe the figure should be set at a higher value so as to pick up a greater degree of market movement – it is unlikely that a market with just three lots of open interest will be subject to a great deal of market activity on a regular basis anyway. |
| Q207 |  | **Do you agree with the proposed draft RTS regarding the aggregation and netting of OTC and on-venue commodity derivatives?** |  |
| Q208 |  | **Do you agree with the proposed draft RTS regarding the procedure for the application for exemption from the Article 57 position limits regime?** | We are in support of having a procedure set in place for applications for exemptions to the position limits regime. However, we question whether the 30 calendar day period of approval is the most appropriate timescale in asking for a position limit exemption. Given the immediacy that is often associated with having to take hedging and risk-reducing positions, we believe that it would be better suited to have an *ex post* approval procedure that would allow for the firm to notify the NCA that they wish to execute a trade and carry it out with immediate effect. |
| Q209 |  | **Do you agree with the proposed draft RTS regarding the aggregation and netting of OTC and on-venue commodity derivatives?** | We do not have any concerns with the proposed draft RTS in relation to the aggregation and netting of OTC and on-venue commodity derivatives for the purposes of establishing the trading venue with the largest volume of trading and to determine significant volumes. |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |