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Re: COMPILATION OF RESPONSES by CESR to the European Commission's request for initial assistance on commodity and exotic derivatives and related business.

Introduction

CESR's input to the mandate of the European Commission, requested by letter of 13 March 2007, on Commodity, Commodity Derivatives and Exotic Derivatives this compilation of responses is organized as follows. Part I contains the individual responses to questions 1, 2, 3, 4 and 6 of the Request for initial assistance. These questions in essence relate to:

- (1) Overview of the applicable market, CoB and organisational requirements, regulatory regimes relating to commodities, commodity and exotic derivatives, nature of regulation, rationale for the existence of the regulation, various competent authorities involved in the regulation and supervision;
- (2) the list of organised trading venues in the different Member States that provide trading services in the markets for the products mentioned above as well as the list of the products they trade;
- (3) Brief description of the current regulatory status of the trading venues mentioned in point (2) (i.e. whether they are partly or wholly subject to regulation by financial markets competent authorities, any other competent authorities, both or none) as well as their expected regulatory status following MiFID implementation;
- (4) Brief description of the trading venues':
 - main trading methods
 - membership regulation
 - levels of trading transparency
 - capital requirements
 - clearing and settlement arrangements
- (6) For the markets described in Section 6.1 of the Commission Call for evidence (Agriculture, Metals, Energy, Exotic derivatives) please specify the major information sources available to and used by market participants (excluding any pre- and post-trade information) and please specify to what extent the availability of such information is mandated by law or is available from other sources and on what basis (e.g. published by governments or provided by commercial data vendors).

Part I of this compilation covers the responses to questions 1-4 and 6 covering 14 CESR members. Responses illustrate diverging (regulatory) experiences with commodities business. Some jurisdictions do have commodities derivatives and/or commodities business within their borders and have trading venues/national regulation in place (Austria, Belgium, France, Germany, Hungary, Italy, the Netherlands, Portugal, Spain, Norway, UK), subject to further

MiFID-amendments to that extent. Other jurisdictions however (Ireland, Luxembourg, Malta, Finland, Sweden), don't have any organized trading venues for commodities trading at all. In some cases the markets have been established on regional rather than national basis, for example the Nordic electricity markets.

With regard to the rationale for the existence of regulation, some members refer (among other objectives such as promotion of an orderly and transparent market process and market/price stability) explicitly to investor protection whereas others underline the inter-professional nature of these markets (emphasizing prudential supervision and no full range of conduct of business protection) and the role of the regulator involved should be viewed in this context.

Sources of information available for market participants are mainly based upon official exchange information (e.g. trading data) distributed by regulated markets and on external sources such as OTC-brokers and other specialised providers of information.

Part II of this compilation covers the responses to question 5 of the Request for initial assistance of 13 March 2007 with a description to what extent commodity markets are subject to rules that prohibit the use of inside information or market abuse in the different Member States. To what extent do these rules differ, if at all, from those currently imposed by the Market Abuse Directive. Please, specify, where possible, whether there have been any cases of insider dealing or market abuse in those markets.

A brief summary with some general themes and inferences with regard to commodity markets and rules that prohibit the use of inside information or market abuse is included at the start of part II.

Part I

Austria

Question 1:

Article 49 of the ASEA (Austrian Stock Exchange Act) alleges special provisions for the Vienna Stock Exchange: the Vienna Stock Exchange is a stock exchange and at the same time a general commodity exchange. Vienna Stock Exchange is Austria's only stock exchange and also the only general commodity exchange. The only other exchanges that exist in Austria are the ones for agricultural products in Vienna, Graz and Linz-Wels.

According to Article 10 para. 1 fig. 5 of the Constitution, the regulation of stock exchanges is the jurisdiction of the federal government regarding legislation and execution.

The license to operate and manage the Vienna Stock Exchange shall be issued by the Austrian Financial Market Authority (FMA) in agreement with the Federal Ministry of Economic Affairs. The Austrian Financial Market Authority (FMA) in agreement with the Federal Ministry of Economic Affairs shall be responsible for notices, measures and authorizations pursuant to Articles 6 and 7 regarding the exchange operating company's tasks of managing and operating the exchange.

The general Commodity Exchange founded in 1872 was joined with the Vienna Stock Exchange to form the Vienna Stock and Commodity Exchange in 1876. Ever since, as mentioned above, the Wiener Börse has had two departments; the Stock Exchange and the Commodity Exchange. The importance of the Vienna Commodity Exchange for the economy today lies above all in such typical sideline activities as publishing Official Lists for the most important goods traded, drawing up usages, expertises and sample drawings, and of course, in the Court of Arbitration.

The Commodity exchange gained in importance when trading with electric power was imposed on March 21st, 2002.

The EXAA concept of the electricity spot market was developed in close collaboration with the market participants. Which products should come onto the market and how the trading procedure should be organized was decided together with domestic players and foreign electricity traders. By employing professional risk management with daily evaluations, EXAA guarantees the fulfillment of all open positions as the Central Counter Party.

Section I of the Stock Exchange Act 1989 as a federal law regarding Stock Exchanges and General Commodity Exchanges comprises provisions for both stock exchanges and general commodity exchanges. General commodity exchanges are exchanges on which all goods that are tradable on an exchange and are not expressly restricted to trading on stock exchanges or to the exchanges for agricultural products are traded, and on which all ancillary transactions arising from such dealings are also concluded.

According to Austrian law, regarding nature of regulation, a distinction between Commodity Markets and Markets for Commodity Derivatives has to be made.

The management and administration of a general commodity exchange (operation of an exchange) shall require a license issued not by the Austrian Financial Market Authority (FMA), but by the Federal Ministry of Economic Affairs.

An operator of a Commodity Market must establish rules that ensure fair trading. According to Sec. 26 ASEA (Austrian Stock Exchange Act) the trading on such markets has to inter alia

conform to the following principles: “Trading on the exchange shall take place in accordance with the rules of fairness and with the principle of equal treatment of all market participants. Above all, no simulated transactions or transactions for the purpose of damaging third parties may be concluded. The exchange operating company shall issue regulations necessary for the protection of investors and for the maintenance of the good reputation of exchanges in Austria that provide for the equal treatment of the market participants.“ Commodity Markets are supervised by the Federal Ministry of Economic Affairs.

Commodity Derivatives are financial instruments according to Sec. 48a para 1 (3) ASEA. To the extent these financial instruments are traded on a regulated market the same prohibitions of insider dealing and market manipulations which are applicable to other financial instruments apply. The insider dealing (Sec. 48b ASEA in conjunction with Sec. 48a para 1 (1)) and market manipulation prohibitions (Sec. 48c ASEA in conjunction with Sec 48a para 1 (2) ASEA) for financial instruments have been transposed according to the requirements of the MAD.

Regarding Commodity Markets there are no explicit prohibitions of Insider Dealing or Market Manipulation. As mentioned above, Commodity Markets are supervised by the Federal Ministry of Economic Affairs.

Regarding Commodity Derivatives - if they are listed on a regulated market - the regular insider dealing (Sec. 48b ASEA in conjunction with Sec. 48a para 1 (1) ASEA) and market manipulation prohibitions (Sec. 48c ASEA in conjunction with Sec. 48a para 1 (2) ASEA), which have transposed the MAD requirements in this respect, are applicable. According to Sec. 48a para 1 (1) b ASEA Insider Dealing and Market Manipulations in Commodity Derivatives are supervised by the Federal Ministry of Economics and not the FMA. Implementation of MiFID will not result in changes of the market abuse regulation.

Regarding regulatory requirements as they will be in force from the implementation date of the MiFID, some changes have been made in the ASEA. There is no longer a need for superior statutory definition of an exchange, comprising stock and general commodity exchanges.

Regarding the granting or withdrawal of Licenses Art 2 para 1 of the ASEA states that a legal entity that manages and operates an exchange shall be deemed an exchange operating company. Insofar as an exchange operating company under this federal law is a private enterprise charged with the fulfilment of sovereign functions, it shall carry out the tasks imposed on it by this federal law bearing in mind the objective of maintaining a functioning securities industry for the benefit of the national economy and of safeguarding the interests of investors worthy of protection. Art 2 para 2 states that the management and administration of a securities exchange (operation of an exchange) shall require a license issued by the Austrian Financial Market Authority (FMA), and in the case of a general commodity exchange, by the Federal Ministry of Economic Affairs.

According to Art 7 para 1 of the ASEA a separate authorization by the Austrian Financial Market Authority (FMA), or, in the case of general commodity exchanges, the Federal Ministry of Economic Affairs, is required for e.g. mergers of exchange operating companies or for the establishment of branch operations in a third country.

Question 2:

Vienna Stock Exchange is Austria's only stock exchange and also the only general commodity exchange resp. the only regulated market. The only other exchanges that exist in Austria are the ones for agricultural products in Vienna, Graz and Linz-Wels.

Question 3:



According to Article 10 para. 1 fig. 5 of the Constitution, the regulation of stock exchanges is the jurisdiction of the federal government regarding legislation and execution. Exchanges are regulated in Austria by the Stock Exchange Act 1989 (Federal Legal Gazette no. 555/1989) as amended by the Federal Act promulgated in Federal Legal Gazette I no. 97/2001.

To our knowledge, under MiFID in any case the “Official Market” and the “Semi-Official Market” of the Vienna Stock Exchange are expected to be regulated markets. According to Art. 23 of the ASEA the general commodity exchanges shall have only an Official Market.

Question 4:

Trading hours

Presently trading sessions of Vienna Commodity Exchange are being held for:

- raw skins and hides, leather, driving belts and technical leather products on every first Friday of the month from 10:30 to 11:30 a.m.,
- timber on every first Wednesday of every month from 15:00 to 16:00 p.m.,
- for electricity daily from 8:00 to 10:00 a.m.

Other goods may be traded at the times mentioned in a) and b).

Price Lists of the Commodity Exchange

Prices for timber, raw skins and hides, leather, driving belts and technical leather products are regularly fixed by Price Committees for these products and published in the Official List of the Vienna Commodity Exchange that comes out in two parts. These Official Lists are important sources of information on current trading prices for merchants.

Advisory Council

An Advisory Council has been established to advise the Management Board on affairs relating to the operation and management of Wiener Börse as a general commodity exchange, consisting of the President of the Panel of the Court of Arbitration of the Commodity Exchange of Wiener Börse and at least five, but at the most nine, further members appointed by the Supervisory Board from the group of exchange dealers on the commodity exchange.

The Court of Arbitration of the Vienna Commodity Exchange

The Vienna Commodity Exchange may be called for claims arising out of contracts for the purchase of goods as well as for claims for payment.

Anyone who carries on a business regardless of whether such person is an individual, an Austrian or non-Austrian shall have the right to call the Court of Arbitration. It is not required that a business be registered in the Companies Register. However, one of the parties to the dispute (usually, the party filing the complaint) must be a member of the Vienna Commodity Exchange. To become a member, one has to apply and pay a one-time registration fee. One may resign from membership at any time.

The competence of the Court of Arbitration must be agreed-on in writing by the disputing parties.

General Terms and Conditions of Business

Article 13 of the Austrian Stock Exchange Act deals with the general terms and conditions of business:

(1) The exchange operating company shall draw up General Terms and Conditions of Business, which - in the case of general commodity exchanges - must be authorized by the Federal Ministry of Economic Affairs; the same shall apply to any amendments thereto.

(2) The General Terms and Conditions of Business shall include

1. regulations regarding exchange membership,
2. regulations regarding trading hours;
3. regulations regarding the location of the exchange,
4. the trading rules pursuant to Article 26,
5. the trading practices for the commodity exchange,
6. the official Bulletin of the exchange, in which all important facts regarding exchange trading shall be published.

(3) Exchange membership shall require admission by the exchange operating company. The exchange operating company shall also decide on the exclusion from exchange membership.

(4) The exchange operating company may in individual cases define the starting and closing hours for exchange trading differently from those of the General Terms and Conditions of Business, or hold or cancel trading sessions if required by important circumstances in the interest of the public, or in order to guarantee proper trading on the exchange, or to protect persons interested in proper trading on the exchange, or if due to other important circumstances proper trading cannot be guaranteed.

(5) Trading hours and the location of the exchange for trading in foreign exchange may be fixed only after prior consultation with Österreichische Nationalbank, the central bank of the Republic of Austria.

(6) The exchange operating company shall issue a Schedule of Fees for the items listed below taking into account the general principles of sound business and bearing the interest in maintaining a functioning exchange for the benefit of the national economy in mind.

Membership to the Exchange

According to Article 14 Membership to the Exchange may be granted if:

1. No facts are known that might indicate that the applicant is not as reliable as is required to be able to take part in trading on the exchange,
2. the applicant is not restricted in its capacity to do business, in particular due to insolvency or because it has been put under receivership,
3. the applicant or one of its officers has not been convicted by law for an offense pursuant to Article 13 Business Code and as long as the sentence has not been abrogated, or it is not subject to restricted divulgence from the penal record,
4. the applicant or one of its officers has not been punished finally and conclusively pursuant to Article 48, unless the violation of Article 48 has been insignificant or the sentence has become extinct in the criminal record, or
5. if no facts are known that would be detrimental to the reputation of the domestic market or hinder the maintenance of orderly and fair trading.

Article 17 states e.g. that Membership to a commodity exchange is restricted to:

1. Persons that are professionally engaged in the production, sale or processing of goods that are admitted to and tradable on the exchange,
2. persons who use goods admitted to and tradable on the exchange in their enterprise, or
3. persons that are engaged in auxiliary business dealings connected to the goods admitted to and tradable on an exchange.

Upon being accepted, Members of the Commodity Exchange must either appoint themselves, a member of the management or an employee of the company, as dealer to the exchange.

According to Article 18 it is the duty of the Members of an exchange to:

1. comply with the trading rules of the exchange in doing business, to act with the conscientiousness of a proper businessperson and to avoid any activities that might be damaging to the reputation of the exchange;
2. pay all prescribed stock exchange fees and any other dues in a timely manner;
3. always have at least one dealer delegated to the exchange;
4. maintain the prescribed collateral at the stipulated minimum amount as specified under the trading and clearing system;
5. as Member of a stock exchange, to take the measures within its enterprise as stated in Article 82 paragraph 5 fig. 1 to 3 for the prevention of insider dealings.

Surveillance of Trading

According to article 25:

(1) the exchange operating company shall supervise trading on the exchange and shall take the decisions during trading sessions as may become necessary according to the trading rules and shall also ensure that these trading rules are complied with.

(2) The surveillance of trading shall be carried out by means of an adequate technical surveillance system that guarantees the systematic and complete gathering and evaluation of data related to trading on the stock exchange and facilitates any necessary investigations.

(3) If there is reason to suspect that insider dealings or violations of any other provisions have been committed that fall under the competence of the Austrian Financial Market Authority (FMA), the exchange operating company shall immediately inform the Austrian Financial Market Authority (FMA).

(4) If the automated surveillance system pursuant to paragraph 2 does not suffice for the adequate surveillance of trading activities and settlement, then the FMA shall order, pursuant to Article 45 paragraph 2, that the system be improved under penalty of a fine within an adequate period of time so that it meets the requirements specified in paragraph 2; the Law on Administrative Enforcement (FLG 53/1991) is applicable.

(5) If the exchange operating company has the well-founded suspicion that a transaction either already effected, in progress or planned serves the purpose of money laundering, it shall immediately notify the competent authorities (Article 6 Law Enforcement Bodies Act) and discontinue any further settlement of the transaction until the facts of the case have been clarified, unless the delay of the transaction threatens to complicate or prevent the investigation of the facts of the case. This shall also apply in case of a well-founded suspicion that the contracting party actually does participate in transactions which serve the purpose of money laundering (Articles 165 - without regard to the minimum value stated there and taking into account assets stemming from a criminal offense committed by the offender - and 278a paragraph 2 Criminal Code). The exchange operating company shall be entitled to request the competent authority to decide as to whether there are any objections against the immediate settlement of a transaction; if the competent authority (Article 6 Law Enforcement Bodies Act) fails to issue a statement on the case by the end of the following banking day, the transaction may be settled without delay.

(6) Upon request, the exchange operating company shall provide the competent authority (paragraph 5) with any information deemed necessary for the prevention or prosecution of money laundering.

(7) The competent authority (paragraph 5) shall have the power to order the discontinuation or postponement of any transaction in progress or planned, which has come under the well-founded suspicion of serving the purpose of money laundering. The competent authority shall without unnecessary delay notify the contracting party and the Public Prosecutor of the order. The notice given to the contracting party shall contain reference to the respective party's or any other involved person's right to lodge a complaint with the Autonomous Administrative Tribunal on grounds of infringement of rights; in this context, the competent authority shall also make reference to the provisions of Article 67c General Law on Administrative Procedure regarding such complaints. The competent authority shall lift the injunction as soon as the grounds on which it had been issued have ceased to exist or the Public Prosecutor issues a declaration stating that the conditions for the issue of the temporary injunction pursuant to

Article 144a Code of Criminal Procedure are not given. The injunction shall also become ineffective,

1. if six months have passed since its issue;
2. as soon as the court has passed a final decision on the order for a temporary injunction pursuant to Article 144a Code of Criminal Procedure.

(8) The stock exchange operating company shall keep secret from its contracting parties and third persons all actions and proceedings which serve the performance of paragraph 5 to 7. However, as soon as an injunction pursuant to paragraph 7 has been issued, it shall have the right to refer the contracting party to the competent authority (paragraph 5); with the consent of the competent authority it shall also have the right to inform the contracting party directly of the injunction issued.

(9) Data which have been collected pursuant paragraph 5 and 6, shall become null and void if used to the disadvantage of the defendant or third parties involved in proceedings instituted exclusively on grounds as stated in Articles 33 through 41 and 49 through 52 of the Fiscal Penalties Act. If the competent authority (paragraph 5) on the basis of the data established pursuant to paragraph 5 and 6 arrives at the conclusion that there is a suspicion merely of an infringement of Articles 33 through 41 and 49 through 52 of the Fiscal Penalties Act, it shall abstain from notification pursuant to Article 84 Code of Criminal Procedure as well as from notification of the fiscal authorities for criminal offenses.

(10) Claims for damages shall not be permitted that are based on the circumstance that the exchange operating company or a person in its employment delayed or failed to effect a transaction on the negligent lack of knowledge that the suspicion of money laundering was wrong.

Article 25a of the ASEA states that the Austrian Financial Market Authority (FMA) shall have the right to make use of the trading surveillance system pursuant to Article 25 paragraph 2 when conducting investigations for which it is responsible by virtue of this federal law and pursuant to Article 1 Securities Supervision Act (ASA, FLG 753/1996) or to order the exchange operating company to carry out such investigations.

The exchange operating company shall provide the FMA with statistical data, in particular with turnover figures and prices of instruments traded on regulated markets. The FMA shall be empowered to determine by decree the classification and the type of transmission to be used or to dispense by decree with such transmission if the information necessary for the fulfilment of their duties can also be obtained by means of another appropriate information system; in this case, the exchange operating company shall, however, be also obliged to promptly answer any inquiries the FMA may request about stock exchange trading.

The exchange operating company shall, notwithstanding paragraph 2, be obliged to give the FMA any relevant information it might request in the course of its supervisory duty and to assist the FMA in conducting investigations. If there is reason to suspect that any provisions have been infringed upon that are within the competence of either the exchange operating company, in particular infringements of the trading rules, or of the FMA, then these bodies shall cooperate and provide each other with the necessary information. The FMA shall, however, be empowered to order the exchange operating company to discontinue the investigations or any other measures if these are likely to impede or prevent the investigation of the facts of a matter pursuant to Article 48a of this federal law, or to impede or prevent the investigation of any infringements pursuant to Article 2 fig. 4 Securities Supervision Act (SSA).

Trading Rules

According to Article 26 trading on the exchange shall take place in accordance with the rules of fairness and with the principle of equal treatment of all market participants. Above all, no simulated transactions or transactions for the purpose of damaging third parties may be concluded. The exchange operating company shall issue regulations necessary for the protection of investors and for the maintenance of the good reputation of exchanges in Austria



that provide for the equal treatment of the market participants. These regulations shall comply with the provision of Article 82 paras. 5 for stock exchanges.

The exchange operating company shall issue rules and regulations of trading based on the common usages for the instruments traded on the exchange so as to fulfil the requirements of promptness and effective trading. The rules and regulations of trading shall also state the procedure in case a transaction is not fulfilled or a Member of the exchange goes bankrupt. In these cases it may be decreed that any realization only be carried out on the exchange by Official Brokers or Non-Official Brokers. If trading in foreign means of payment is involved, then the Österreichische Nationalbank shall be heard beforehand.

The exchange operating company shall issue rules for the settlement of exchange transactions in the form of the General Terms and Conditions of Business (Article 13) to ensure promptness and fulfilment, taking into account international developments, and shall also set up a **clearing and settlement agency** for this purpose; in the case of general commodity exchanges, it shall **not** be obligatory to set up a clearing and settlement agency. The exchange operating company, however, is free to contract legal entities under private law to set up a settlement and clearing agency if these can guarantee the proper settlement of exchange transactions. If settlement agencies are charged with the clearing of exchange trading in options and financial future contracts, they shall have the right to carry out exchange transactions in options and financial futures contracts for their own account and to fulfil obligations arising there from including the delivery and receipt of securities; the provisions of the Banking Act shall not apply to such settlement agencies, however, these settlement agencies may not carry on banking operations nor participate in stock exchange transactions. This shall apply analogously to the exchange operating company, if it sets up its own settlement agency and acts as a settlement agency in its own right. The settlement agencies shall provide all and any information pertaining to the settlement and fulfilment of stock exchange transactions to the supervisory authorities, the exchange operating company and the Stock Exchange Commissioner that might be needed by these bodies to fulfil their duties.

Trading on the Commodity Exchange

Article 29 states that trading on the commodity exchange shall be carried out by the Official Brokers (*Sensale*), directly by exchange traders or by an automated trading system. Whenever Official Brokers act as intermediaries the provisions in Articles 60 to 63 apply mutatis mutandis with the exception of the order books.

Price Determination

According to Article 31 the exchange operating company, under the supervision of the Exchange Commissioner, shall determine the prices of the negotiable instruments to be traded on the commodity exchange on a daily basis after the closure of the trading session. These shall be based on transactions concluded by the intermediaries during the trading session as well as on information the intermediaries gain knowledge of in the course of exercising their function and from persons of confidence the exchange operating company may have appointed from among the dealers to the exchange with their approval. The exchange operating company is responsible for the immediate publication of the prices determined pursuant to paragraph 1 in official quotation lists.

Surveillance of the Exchange

According to Article 45 Stock exchanges are under the supervision of Austrian Financial Market Authority (FMA). The Austrian Financial Market Authority (FMA) shall supervise the organization of the exchange and the decisions made by the bodies of the exchange operating company as to their compliance with law, in particular through the Exchange Commissioner appointed pursuant to Article 46. The FMA shall supervise the proper conduct of stock

exchange trading. The general commodity exchanges are under the supervision of the Federal Ministry of Economic Affairs.

Article 45 states inter alia that the supervisory authorities shall supervise compliance with the provisions of this federal law and with the other legal regulations regarding exchanges. They shall always uphold the interests in functioning stock exchanges for the benefit of the national economy as well as safeguard investors' interests. If a body of the exchange operating company commits a violation of the provisions of this federal law, or of any decrees or notices issued by virtue of this federal law, then the competent supervisory authorities shall, notwithstanding the necessary measures to be taken by the exchange operating company in the case of imminent danger pursuant to paragraph 3, order the exchange operating company under penalty of fine to reinstate the proper state of affairs within a period of time reasonable under the circumstances of the case.

Exchange trade at the Exaa spot market

Trading proceeds at EXAA according to the Double-Auction-Bidding concept – that is to say buyers and sellers are equal trading participants and can place both buy and sell orders at the same time. Individual orders are recorded in a closed order book in such a way that the market participants cannot see each other's orders. On exchange days an auction is held at a specific time daily. The market participants are informed immediately after the auction about the prices per product calculated in the auction (Market Clearing Price = MCP) as well as their allocation of volumes. The physical fulfilment of deals takes place the next day (day-ahead-trading).

The main goal in setting up an electronic trading platform with an auction system is bundling liquidity. In addition, trading activities are more efficient because there is less work involved in closing deals than in bilateral trading. The energy exchange's neutral position, the guaranteed anonymity of the orders and the immediate publication of price information, ensure the fairness of the market as a whole. Because it adheres to strict legal regulations and continually monitors all criteria as Central Counter Party, EXAA is a reliable partner for each market participant in each deal concluded at the exchange. The exchange is an organized trading place with simple and strictly controlled procedures. Exchange trading times are Monday to Friday 8.00-10.00 am.

Trading in electric power products is carried out on Vienna Stock Exchange in its function as a general commodity exchange. Trading in electric power comprises trading and the clearing and settlement of exchange transactions in the following trading products:

- a) Spot market products for electric power (spot market electric power – day ahead)
- b) Derivatives market products for electric power.

The rules govern the requirements and conditions for the participation of members in Wiener Börse in its function as a general commodity exchange in trading in electric power products as well as the requirements and conditions for the participation in the clearing and settlement of exchange transactions in trading in electric power products concluded on Vienna Stock Exchange in its function as a general commodity exchange.

The exchange operating company has commissioned EXAA Abwicklungsstelle mit Energieprodukten AG (hereinafter “EXAA“ or “Settlement Agency“) with the task of operating and making available the automated trading and settlement system for trading in electric power products and for the clearing and settlement of exchange transactions concluded in trading in electric power products on Vienna Stock Exchange in its function as a general commodity exchange and has charged EXAA with the function of settlement agent pursuant to Art. 26 par. 3 Stock Exchange Act for the settlement of exchange transactions concluded in trading in electric power products on Vienna Stock Exchange in its function as a general commodity exchange. EXAA has accepted this commission.

There are some participation requirements: Only members of the commodity exchange (Art. 14 of the General Terms and Conditions of Business of the Exchange Operating Company



Vienna Stock Exchange in its Function as a Securities Exchange and a General Commodity Exchange) whose companies are engaged in business activities related to the trading products are permitted to trade in the spot market and the derivatives market for electric power products (Art. 1 par.1) and/or to participate in the clearing and settlement of exchange transactions concluded in trading in the spot and derivatives markets for electric power products; these are:

- a) electricity undertakings pursuant to Art. 7 fig. 8 and fig. 27 EIOA; or
- b) those undertakings from the group of domestic end users pursuant to Art. 7 fig. 9 EIOA who use the power products
 - for business purposes,
 - for whom the power products do not play merely a supporting role in production or for the services offered, and
 - the power products are used within an undertaking in such a manner that requires business operations run commercially; or
- c) as undertakings are members of recognized foreign power exchanges and are authorized to trade on these and/or are recognized clearing and settlement agents for recognized foreign power exchanges, or
- d) undertakings with their registered office in EEA member states or other third states who are authorized to carry out the activities of an electricity undertaking

Question 6:

To our knowledge, the main information source available to and used by market participants are data vendors: Wiener Börse AG provides professionally compiled, real-time price data and market depth data to companies, which are entitled under a contract to distribute the data of Wiener Börse AG, i.e., to so-called data vendors. The data vendors send data to professional end users, Web portals and private investors.

In general, Wiener Börse AG data are available in real time (real-time data; Data which are younger than 15 minutes at the time of transmission), with a time lag (delayed; Data made available by Wiener Börse AG with a time lag of 15 minutes or more after their first dissemination) and end-of-day data (batch files; Data which are transmitted once a day after the end of trading).

As mentioned above (question 4), there are also Price Lists of the Commodity Exchange: Prices for timber, raw skins and hides, leather, driving belts and technical leather products are regularly fixed by Price Committees for these products and published in the Official List of the Vienna Commodity Exchange that comes out in two parts. These Official Lists are important sources of information on current trading prices for merchants.

According to Article 31 of the ASEA the exchange operating company, under the supervision of the Exchange Commissioner, shall determine the prices of the negotiable instruments to be traded on the commodity exchange on a daily basis after the closure of the trading session. These shall be based on transactions concluded by the intermediaries during the trading session as well as on information the intermediaries gain knowledge of in the course of exercising their function and from persons of confidence the exchange operating company may have appointed from among the dealers to the exchange with their approval. The exchange operating company is responsible for the immediate publication of the prices determined pursuant to paragraph 1 in official quotation lists.

Belgium

Question 1:

Commodity market: BELPEX (Belgian Power Exchange)



The organization of a power exchange in Belgium is governed by the Royal Decree of 20 October 2005 on the establishment and the organization of a Belgian market for the exchange of electricity blocks.

The Royal Decree stipulates that, as a prerequisite to operating a power exchange, a license must be obtained from the Minister of Energy. Belpex has obtained its license as power market operator on 11 January 2006.

The Royal Decree stipulates further that the market operator must establish Market Rules for its market and submit those for approval to the Minister of Energy.

Belpex has established the Market Rules for its day-ahead market (DAM). The rules indicate the conditions that must be met to be admitted to the Belpex DAM, the obligations incumbent upon both the participants of the DAM and Belpex, as well as the general principles in respect of market operations, order submission, fixing, dispute settlement and general rules of conduct (including a prohibition of insider trading).

The Belpex Market Rules are further implemented in a set of Market Procedures and Communications:

The introduction of a power exchange in Belgium is a direct response to the opening up of the European electricity markets. The 1996 and 2003 European Directives (1996/92/EC & 2003/54/EC), implemented into the Belgian Law (29 April 1999 and 1 June 2005) have created an opportunity to launch an organized electricity market in Belgium, named Belpex.

The creation of an anonymous market for the exchange of blocks of energy is one of the measures aiming at improving the competition with respect to the trading in electricity. The creation of such a centralized platform provides an alternative for the market players as to the bilateral over-the-counter contracts and allows them to balance their electricity portfolios in the short term. It also provides the market with a transparent reference price. The Belpex Day-Ahead Market (DAM) provides standardized products (one hourly instruments) for producers, distributors, industrial groups, traders and brokers to sell and purchase electricity. Belpex is coupled with its two neighbours, APX in the Netherlands and Pownext in France.

The CREG (Commissie voor de Regulering van de Elektriciteit en het Gas / Commission de Régulation de l'Electricité et du Gaz) is the competent authority for the supervision of BELPEX.

Question 2:

BELPEX (Belgian Power Exchange)

Question 3:

Commodity market: BELPEX (Belgian Power Exchange)

As the instruments traded on Belpex qualify as commodities (i.e. spot contracts in electricity), it is not a regulated exchange in financial instruments. Under MiFID it will not be a regulated exchange or MTF.

Question 4:

Commodity market: BELPEX (Belgian Power Exchange)

The main characteristics of the day-ahead market organized by Belpex are:

- Anonymous trading.
- One hourly trading periods and contracts in electricity.
- Entry of limit orders and block orders with regard to one or more instruments with delivery day D is allowed as of 14 days prior to delivery day D until 11:00 a.m. on the day immediately preceding delivery day D.



- Fixing of the contracts takes place every calendar day at 11:00 a.m. (D-1) via a double-sided blind auction.
- After the fixing, participants are committed to delivering to or withdrawing from the Belgian hub, during the predetermined hours of the following day, the volume of electricity determined by the fixing.
- The fixing process determines for each hour of the following day the market results, i.e. the market clearing price and the market clearing volume.
- After the fixing, the market results are made available to the participants. Under normal circumstances these are published not later than 11:25 a.m.

Clearing and settlement facilities are ensured by a central counterparty which offers a guarantee of payment. In order to guarantee anonymity and financial security, the contracts concluded on the Belpex DAM are cleared and settled by a thereto designated central counterparty. Belpex has designated APX as central counterparty.

In order to secure financial transactions, Belpex participants must deposit the necessary collateral (cash or bank guarantee) in euros before they can start trading on the Belpex DAM. The deposited collateral protects the central counterparty and thus the other participants against the default of payment by a participant.

Settlement is based on the volumes stipulated in the concluded contracts and the market clearing prices. After the fixing, Belpex transmits the data concerning the concluded contracts to the central counterparty which then calculates the net amount payable or receivable by each participant for the day's trading. These amounts are invoiced on a weekly basis.

The electricity purchased and sold on the Belpex DAM is exchanged on the Belgian hub via the ELIA nomination system (ELIA being the Belgian transmission system operator) by the ARPs (Access Responsible Parties). An ARP is contractually obliged vis-à-vis ELIA to ensure that all the transactions in its perimeter are in balance. ELIA continuously monitors the electricity flows on its network to ensure the balance between off-take and injection of electricity.

The admission and access procedure sets out the detailed conditions to be fulfilled to become a participant of the Belpex DAM. To be able to trade on the Belpex DAM, an interested party must enter into a participation agreement with Belpex. An interested party must also enter into a participation agreement CSS (Clearing and Settlement Services) with APX, who will organize the clearing and settlement of the contracts concluded on the Belpex DAM.

Minimum capital requirement: The market operator must have sufficient financial means available for the organization and functioning of the market with a minimum of 1.500.000 EUR.

Question 6:

Commodity market: BELPEX (Belgian Power Exchange)

Belpex offers the possibility to receive via email (free of charge) the:

- Belpex daily report
- Belpex weekly report
- Belpex monthly report

The complete history of market reports is accessible together with the Belpex market data history via its website.

Finland

Question 1:



In addition to competition law, some commodities markets, for example electricity and emission allowance markets, are subject to extensive public regulation. However, overview of the whole regulatory regime (other than the financial market legislation) relating to *commodities* in general or certain commodities in particular is covered in this answer.

Nature of Regulation: as from the implementation date of the MiFID, market intermediaries, as well as regulated markets, in *commodity and exotic derivatives markets* shall be subject to the MiFID regime to the extent the MiFID requires it. Furthermore, trading in the commodity and exotic derivatives is subject to the market abuse regulation to the extent the Market Abuse Directive requires it.

Rationale for the regulation: Basically, the rationale has been to transpose relevant EU directives.

Competent authorities: Rahoitustarkastus is the competent authority for financial markets (including intermediaries operating on them) except in the case of regulated markets. Ministry of Finance is the competent authority to license all regulated markets in Finland, and it also approves their rules.

Question 2:

There are no organized trading venues for commodity or exotic derivatives in Finland.

Question 3:

N/A, see answer to Question 2 above.

Question 4:

N/A, see answer to Question 2 above.

Question 6:

N/A, see answer to Question 2 above. However, Finnish market participants active in commodity or exotic derivatives markets use foreign market information sources, for example in electricity derivatives markets, Norwegian Nordpool's market information. The availability of information from foreign trading venues is naturally not subject to Finnish law.

France

Question 1:

A distinction must be made between soft commodities (agricultural products) and energy and emission allowances markets.

A/ Soft commodities & soft commodity derivatives

A.1. Soft commodities

Though the French soft commodity market is important in terms of volumes, it is still operated in a very traditional manner. Brokers and sworn-brokers ("*courtiers assermentés*") are at the center of soft commodity transactions (around 80% of trades are brokered according to estimates made by the French federation of the unions of commodity brokers¹).

Regulatory framework

Due to the lifting of all restricting regulations, the buying and selling of agricultural commodities in France is not subject to any limitations.

¹ Fédération française des syndicats de courtiers de marchandises.



However, brokers comply with a general code of conduct developed by the French union of commodity brokers.

The overwhelming majority of contracts are based on the Incoterms standard specifications. These international commercial terms are devised and published by the International Chamber of Commerce (ICC).

For each agricultural commodity and each delivery mode (e.g. barge, truck, train, etc...) a specific standard contract is used. As an example for cereals and oilseeds, the “Incograins” standard contract specifications apply.

These contracts comprise an arbitration clause (*clause compromissoire*) whereby the parties agree to refer their possible disputes to an arbitration panel (generally the Arbitration Chamber of Paris).

A.2 Soft commodity derivatives

The only significant trading venue for soft commodity derivatives is the MATIF market which is operated by Euronext Paris as a regulated market.

Regulatory framework

MATIF is currently and will remain a regulated market under the new regulatory framework transposing the MIFID.

As such, transactions made on the MATIF are subject to the supervision of the French AMF and any market abuse on this market may be prosecuted.

MATIF presentation

MATIF offers a range of agricultural futures and options based on four underlying which are:

- Milling wheat
- Corn
- Rapeseed
- Rapeseed oil

MATIF futures are physically deliverable. (Options are options on futures).

All trades on MATIF are covered by the guarantee of the LCH-Clearnet SA Clearing House concerning the finality of payment and settlement.

As a regulated market, MATIF is placed under the supervision of the AMF and the commodity derivatives which are traded on this market are financial instruments under the French Monetary and Financial Code.

As such, the specific laws and regulations concerning market abuse (Articles L 465-1 and L 465-2 of the French Financial and Monetary Code and Articles 632-1 et s. of the AMF General regulations) do apply.



B/ Energy and Emission Allowances

1/ Electricity and Gas

The legal framework and the energy authority

The French regulatory framework applying to the electricity and gas markets has incorporated the relevant sectoral European directives. The most important ones concerning the electricity and gas markets are, respectively, Directive 2003/54/EC of 26 June 2003 concerning common rules for the internal market in electricity and Directive 2003/55/EC of 26 June 2003 concerning common rules for the internal market in natural gas. The most important pieces of legislation are the Act of 10 February 2000 (Electricity) and the Acts of 3 January 2003 and 9 August 2004 (relating respectively to the gas and electricity markets and to the public service in these utilities).

In line with the mentioned Directives, French laws and regulations were modified in order to ensure a non-discriminatory access to the transmission network and distribution system. This entailed the creation of separate entities for the operation of transmission systems (unbundling).

Also, in order to supervise the liberalization of the gas and electricity markets, ensure the security of supply and of the supply/demand balance a sectoral independent energy authority was established in 2000: the CRE (*Commission de régulation de l'énergie*).

The powers of CRE relate above all to transmission systems management and the unbundling of integrated operators' activities. In addition, in compliance with legislative and regulatory standards, CRE may, as concerns electricity, make regulatory decisions in several areas: missions of system operators, rules of connecting to systems, conditions of access and use of systems, balancing programmes, system access contracts and protocols and principles of unbundling. Also the CRE has an administrative sanctioning power (penalties). Such penalties are imposed in the event of a regulatory breach, relating in particular to: the access or use of public electricity grids, transmission and natural gas distribution facilities or liquid natural gas (LNG); the principles of unbundling; the rules governing the availability of operators' accounts.

It is however important to note that the powers of CRE do not concern financial markets in derivative instruments that are based on energy commodities.

Question 2:

Powernext (MTF in Electricity, Gas emission allowances).

MATIF (Regulated market in agricultural derivatives).

Question 3:

Powernext is currently regulated as a MTF (under the current French regulatory framework which transposed the CESR ATS standards).

It is expected that Powernext will remain a MTF under the new regulatory regime transposing the MIFID. This will concern its business on commodity derivatives that are financial instruments under the MIFID (electricity futures for which the delivery is to be made two days or more after the last trading day).

Activities concerning spot electricity contracts, falling outside the definition of financial instruments under the MIFID implementation regulations, would not be part of regulated activities.

Question 4:



With the exception of the MATIF regulated market, the most important organized trading venue in commodities in France is Powernext. Its most important activities relate to electricity (spot and derivatives) and to carbon dioxide emission allowances (spot). A very minor activity related to gas is not detailed hereafter.

Matif (for reference²)

Futures and Options Contracts (Agricultural derivatives) listed on the MATIF are traded daily and continuously from 10.45 to 18.30 (pre-opening starts at 7.04). No spot business takes place on the MATIF.

Contracts are physically deliverable. All trades are cleared with LCH-Clearnet SA. The trading platform is LiffeConnect (same as for all derivatives traded on Euronext markets).

- **Pre-trade transparency (summary)**

Market members have access to five best bid and ask (price and volume).

- **Post trade transparency (summary)**

All trades (price and volume) are published in real-time. High and low of day are also published in real time. At the end of the trading session: total volume , high/low; closing price.

(+real time publication of the difference between closing price of last day and last traded price)

Powernext Electricity

Powernext offers trading in:

- Day-ahead contracts “Powernext Day-Ahead” (spot electricity contracts)
- Medium term contracts “Powernext Futures” (qualifying as financial instruments under French law)

Spot electricity contracts (Day-Ahead)

On the Powernext Day-Ahead market, participants can trade, from the day before until one hour before delivery, contracts that commit them to inject into or withdraw from the French transmission network a volume of electricity throughout a given hour, at market price. The contracted electricity can be delivered at any point within the French transmission network.

The Powernext Day-Ahead market combines three market segments which differ from one another by the trading process:

- 1 /Powernext Day-Ahead Auction (auction traded)
- 2/ Powernext Day-Ahead Continuous (continuous trading)
- 3/ Powernext Day-Ahead Intraday (continuous trading).

1/ Trading process of the Powernext Day-Ahead Auction:

After the order book is closed, at 11.00 a.m. CET, seven days a week, the purchase and sale orders are aggregated and matched according to their merit order, independently from the geographical origin of the orders and within the cross-border available capacity.

² MATIF market rules are available on www.euronext.com



2 & 3/ Trading process of the Powernext Day-Ahead Continuous and Intraday:

The hourly and block contracts can be traded continuously on the platform:
from 7:30 am to 11:30 am on Powernext Day-Ahead Continuous, block of hours to be delivered on the following day.

from 7:30 am to 11:00 pm on Powernext Day-Ahead Intraday, hours and blocks of hours to be delivered on the same day (until one hour before delivery) and on the following day.

Electricity Futures contracts

“Powernext futures” are physically settled futures contracts with monthly, quarterly and yearly deliveries. Contracts are either baseload (electricity delivered 24 hours a day) or peakload (electricity delivered from 8:00 am to 8:00 pm, holidays included, weekends excluded). The nominal is 1 MW multiplied by the length of the delivery period. Trading takes place from 9:00 am to 4:00 pm (CET) on business days (Banque de France’s TARGET calendar)

- Pre-trade transparency
 - Day-ahead (spot): the order-book is not public in pre-opening phase
 - Powernext Futures : 4 best bid-ask for each contract

- Post-trade transparency
 - Day-ahead (spot): global price and volume published per contract immediately after the auction.
 - Powernext Futures : all trades published immediately (price/volume/ total daily volume per contrat)

Powernext Carbon (Emission allowances)

Market model

Powernext Carbon is an organised spot market enabling exchange of carbon dioxide emission allowances.

Powernext Carbon is an order-driven, anonymous market, in which contracts are traded continuously from 9am to 5pm (CET) from Monday to Friday on the same electronic, web-accessible system as for electricity spot and futures contracts.

Participants submit bids or asks via their orders, which specify a given quantity and price. When one order is matched with an opposite order from another member, a transaction is created.

- Pre-trade transparency
 - Powernext Carbon : 4 best bid and ask.

- Post-trade transparency
 - Sur Powernext Carbon : all trades published daily (price/quantity).

Settlement

Every transaction generates a DVP instruction. The Caisse des Dépôts controls the limit of the buyer’s cash account or his settlement bank in the amount of the transaction. At this stage, the Caisse des Dépôts makes a commitment to transfer the allowances to the buyer’s account and the cash to the seller’s account.

The trade is rejected if the buyer does not have sufficient funds or if the seller does not have sufficient allowances.

Once the trade is validated, the Caisse des Dépôts completes the DVP process by:



- transferring allowances from the seller account to its transit account and from its transit account to the buyer account. The trade is delivered once the CITL sends official notice that the transfer is complete.
- debiting the buyer's cash account and crediting the Caisse des Dépôts's transit cash account and crediting seller's cash account in the amount of the transaction.

Question 6:

Soft commodities

Despite the information services provided by some specialised datavendors (Agritel, Offre et Demande Agricole-ODA-), industry sources indicate that the consultation of specialised brokers remains the primary source of pre and post trade information.

Sectoral statistics compiled by trade associations and chambers of commerce or agriculture are also published, but they do not seem to be used as relevant market data, due to the delay affecting their publication and their degree of generality. Market participants in these sectors often seek information concerning a very specific type of quality and place of delivery.

For pre and post trade requirements relating to the MATIF regulated market, see the answer to question 4.

Energy

Some datavendors (e.g. Reuters) provide information on the OTC markets, both on spot and derivatives. However, the consultation of specialised brokers remains the primary source of information.

For pre and post trade requirements relating to Powernext, see the answer to question 4.

Greece

Question 1:

According to the MiFID implementation drafts, the provision of investment services in commodity and exotic derivatives– has to comply with general conduct of business rules. Currently, admission to trading of commodity derivatives in regulated markets has to comply with general market rules for derivatives. After the implementation of MiFID admission to trading of commodity and exotic derivatives in regulated markets will be regulated under the MiFID general framework.

Market abuse regulation is applicable to commodity derivatives and there will be no change by the implementation of MiFID.

HCMC is the relevant competent authority involved in the regulation and supervision for the provision of services and trading in commodity derivatives market.

Question 2:

Currently no commodity exchange operates and no commodity or exotic derivative is traded in a regulated market or an MTF in Greece.

Germany

Question 1:



Conduct of business regulation:

With regard to commodities derivatives, the conduct of business provisions, as set forth in section 31 et seq. of the German Securities Trading Act, are applicable. Intermediaries providing investment services, but not solely investment advice, with respect to mandatory or optional forward transactions depending on commodities, which generally covers all commodities derivatives, have to comply with general rules on conduct of business (e.g. to provide services with necessary professional knowledge and due diligence in the interest of the client, to avoid conflicts of interests, to demand information of the client of his knowledge and experiences in securities business and to provide useful information) and special rules on conduct of business (e.g. prohibition of recommending purchase or sale of financial instruments if this is not in accordance with the interest of the client).

Since commodities are not regarded to be financial instruments according to section 2 (2b) of the German Securities Trading Act, they are not covered by the conduct of business regulation.

Investor protection and market efficiency are the rationale for the existence of the prudential supervisory regime.

After the implementation of MiFID, the rules on conduct of business will be supplemented and amended in order to meet the requirements as set by Articles 16 et seq. of the MiFID (Operating conditions for investment firms). For instance, the requirement to avoid conflicts of interest will be supplemented by the duty to disclose nature and sources of the conflicts of interest.

Market regulation:

Commodity and commodity derivatives markets can be organised as exchanges pursuant to section 1 of the German Exchange Act. This section sets forth, that the establishment of an exchange has to be authorized by the competent Exchange Supervisory Authority. Exchange Supervisory Authorities are state authorities and linked with the state government. The supervision extends to compliance with law governing exchange transactions and orderly execution of trading at the exchange.

Section 21 of the German Exchange Act regulates the admission of commodities and derivatives and it sets forth that the exchange's board of management is competent for the admission. Before issuing the admission to trading, the Exchange Council – an exchange body elected from the exchange participants - has to establish the terms and conditions of business since trading participants should be aware of the framework prior to trading. The full particulars are regulated by the Exchange Rules which are established by the Exchange Council, and which have to be approved by the Exchange Supervisory Authority. The Exchange Rules have to comprise provisions regarding the area of business of the exchange, the organisation of the exchange, the types of trading and the publication of prices and quotations including the underlying transaction volumes.

The rationale for section 21 of the German Exchange Act is the assumption that the board of management of the exchange disposes of the necessary expertise to decide whether commodities and derivatives are appropriate for exchange trading and whether it can be expected that a functioning market will develop.

Market Abuse regulation:

Market abuse regulation comprises particularly the prohibitions on insider dealing (section 14 German Securities Trading Act) and on market manipulation (section 20 a German Securities Trading Act). Generally, market abuse regulation is applicable to commodity derivatives which are listed on a domestic exchange or a regulated market within the EU/EEA. With regard to commodities, market abuse regulation is only partly applicable. For further details see the answer to question 5 of the Commissions Call for Assistance.

Market efficiency is the rationale for the prohibitions of insider dealing (section 14 of the German Securities Trading Act) and market manipulation (section 20 a of the German Securities Trading Act).

The implementation of MiFID will not result in changes of the market abuse regulation.

Prudential regulation:

Trading in commodities and commodities derivatives requires a licence under section 32 of the German Banking Act (*Kreditwesengesetz* - KWG) if it qualifies as:

- purchase or sale of financial instruments in one's own name for the account of others (financial instruments principal broking), section 1(1) sentence 2 no. 4 KWG; or
- brokering of business involving the purchase or sale of financial instruments or their documentation (financial instruments investment broking), section 1(1a) sentence 2 no. 1 KWG; or
- purchase or sale of financial instruments in the name of and for the account of others (financial instruments contract broking), section 1(1a) sentence 2 no. 2 KWG; or
- administration of individual portfolios of financial instruments for others on a discretionary basis (financial instruments portfolio management), section 1(1a) sentence 2 no. 3 KWG; or
- purchase or sale of financial instruments on an own-account basis for others (financial instruments own-account trading), section 1(1a) sentence 2 no. 4 KWG.

Section 33 KWG requires as initial capital from:

- financial instruments own-account traders, as defined in section 1(1a) sentence 2 no. 4 KWG, and from financial instruments principal brokers, as defined in section 1(1) sentence 2 no. 4 KWG, an amount equivalent to at least 730,000 euro;
- financial instruments investment brokers, financial instruments contract brokers and portfolio managers, as defined in section 1(1a) sentence 2 nos. 1 - 3 KWG, respectively, who in the course of the business do not obtain ownership or possession of funds or securities of customers and do not trade in financial instruments for their own account, an amount equivalent to at least 50,000 euro;
- other financial services providers who need a licence under section 33 KWG an amount equivalent to at least 125,000 euro.

Under current prudential supervisory provisions approx. 30 credit institutions, 10 investment firms and 10 other firms active in commodities markets (including commodities derivatives) are subject to supervision according to the Investment Services Directive (ISD – Directive 93/22/EEC) and the Capital Adequacy Directive (CAD – Directive 2006/49/EC) in conjunction with the Credit Institutions Directive (CID – Directive 2006/48/EC). The prudential regime in Germany corresponds to the requirements as set forth in these directives. However, since the definition of derivatives in the German Securities Trading Act and the German Banking Act is broader than the definition of instruments in points 3 to 6 of Section B of the Annex to the ISD, the prudential regime is extended to some firms not being credit institutions or investment firms.

After the implementation of MiFID approximately 30 credit institutions and 20 investment firms active in commodities markets (including commodities derivatives) will be subject to respective supervision. The German prudential regime corresponds to the regime as required by MiFID and will implement the same exemptions as provided for in MiFID and CAD.

Network regulation and Price regulation:

The law on the supply of electricity and gas (*Energiewirtschaftsgesetz* - *EnWG*) shall ensure a secure, well-priced, consumer-friendly, efficient and ecological supply of the general public with electricity and gas. This network regulation aims to ensure efficient competition

concerning the supply with electricity and gas and it aims to ensure an effective and reliable operation electricity networks.

The federal net agency (*Bundesnetzagentur*) is competent for network (power grid, gas distribution system) and for respective network usage prices (which forms e.g for power approximately one third of the retail consumer price) regulation.

There is generally no regulation for prices on the energy markets. The only exception is established by the Renewable Energy Sources Act, which requires grid system operators to pay to producers pre-defined minimum prices for electricity produced by using certain kinds of renewable energy sources. Based on the overall portion of power stemming from such sources, suppliers of power to consumers must repay the payments of the grid system operators on a pro-rata basis. However, other market participants are not required to make similar payments. Therefore, these minimum prices do affect the prices for power to be paid by consumers, but not generally the wholesale prices for power or power derivatives.

Question 2:

There are two organized trading venues in Germany that provide services in commodities as well as commodity and exotic derivatives:

- the European Energy Exchange (EEX) located in Leipzig:
 - power: intraday, day-ahead (physically settled), futures (cash settled as well as physically settled) and respective options,
 - emission allowances: spot, futures (physically settled),
 - coal: futures (cash settled),
 - natural gas: day-ahead, futures (physically settled).

- the Risk Management Exchange (RMX) located in Hannover: agricultural commodity futures (RMX commodities):
 - wheat (physically settled),
 - barley (physically settled),
 - pigs, piglets (cash settled),
 - potatoes (cash settled)

Question 3:

The EEX is an exchange pursuant section 1 of the German Exchange Act. It is authorized and supervised by the competent Exchange Supervisory Authority.

The RMX is also an exchange authorized and supervised by the competent Exchange Supervisory Authority in accordance with section 1 of the German Exchange Act.

Both, the EEX and the RMX will be regulated markets as defined in the MiFID.

Question 4:

EEX

Trading methods:

Products of EEX are traded in the closed auction, in the open auction or in continuous trading with and without open auctions (see section 1(2) of the EEX's trading conditions and sections 32 and 34 of the Exchange rules of the EEX, available at www.eex.com).

At the spot market, the product power is traded in the closed auction. However, at the spot market, power is also traded in continuous trading with open auction. All other products are traded in continuous trading.



Membership regulation:

Trading shall only be carried out by an exchange participant who is admitted to the EEX, or trading can only be mediated by a participant or broker who is acting on behalf of the same and who is approved in accordance with the Exchange Rules.

Upon written application a company can be designated as a broker (designated broker) without itself being an exchange participant on the EEX. Designated brokers are entitled to enter into transactions at the EEX on behalf of their admitted exchange participants (see section 13(3) of the Exchange Rules).

Exchange traders shall only be admitted if they are authorized and have the necessary professional qualifications.

Foreign participants shall appoint an authorized agent with a registered office within Germany.

Companies admitted to the derivatives market can file an application for the admission as a market maker (see section 13(4) of the Exchange Rules). Market makers shall have the requisite trading knowledge to act as market makers.

Decisions regarding the admission of exchange participants and exchange traders are made by the board of management in accordance with section 16 of the German Exchange Act (see section 14(1) of the Exchange Rules).

In addition to all necessary state approvals, permissions, licenses and admissions, the board of management may request from the applicant additional documents and information or conduct an examination of the applicant (see section 14(3) of the Exchange rules).

Exchange traders can only be active for one exchange participant or one designated broker.

After being admitted, the exchange participant is still required to notify the board of management immediately of any changes which could lead to the conditions for admission no longer being met.

In accordance with section 16(4) of the German Exchange Act, exchange participants shall meet the following general requirements:

- the individuals who are by law, articles of association or shareholders' agreement entrusted with the management of the applicant's business shall be reliable and at least one of such persons shall have the necessary professional qualification for engaging in exchange transactions (in the case of sole proprietorship the proprietor has to meet these requirements)
- the orderly settlement of exchange transactions must be assured
- the applicant provides evidence of liable equity amounting to at least 50.000 EUR (financial services institutions are exempted from this requirement, see section 16(4) of the German Exchange Act)
- With respect to applicants that are obliged to provide evidence of liable equity there shall be no facts justifying the assumption that the applicant, taking into account the liable equity capital, does not have the necessary economic capacity to participate in exchange trading in an orderly manner.

Section 16 of the Exchange rules of the EEX sets forth requirements for the settlement of exchange transactions:

- All participants of spot and derivatives markets must use the European Commodity Clearing AG (ECC AG) clearing facilities pursuant to the current clearing conditions.



- A participant must have sufficient technical facilities at its disposal which guarantee correct trading and settlement and which shall be kept in good condition
- The participant shall provide the personnel who are required for trading and settlement and take satisfactorily organizational precautions.

In addition, section 16 stipulates further conditions for the orderly settlement of transactions at the spot market and at the derivatives markets.

Section 22 set forth that an exchange participant or exchange trader can resign from admission upon written notice to the board of management of the EEX. Furthermore, the board of management is entitled to withdraw or revoke the admission of an exchange trader or exchange participant in full or partially.

Levels of trading transparency:

At the moment, the provisions on pre- and post-trade transparency are not directly applicable to commodities.

However, section 43 of the EEX's Exchange Rules (which corresponds to section 24(2) sentence 3 of the German Exchange Act) sets forth that the board of management of the EEX shall publish exchange prices and underlying transaction volumes in the electronic media. The board of management is also authorized to publish information serving to adequately inform the public of matters related to market activities.

As far as market activities are concerned, the website of the EEX (www.eex.com) contains a section called "market information". This section provides, inter alia information on power plants (e.g. standard messages, list of power plants, map providing an overview of power plants and further information on them, net production). This information is based on bilateral agreements with the respective reporting companies. Since this information is provided by others, the EEX is only a platform in respect to this data.

Information related to the net is not published yet. But the EEX intends to publish such data in the future.

Besides the exchange transparency, it has to be noted that the levels of trading transparency are very low with regard to the OTC market (in the power market 70 – 80 % of the transactions are traded OTC).

Capital requirements:

The enterprise wishing to participate in trading has to demonstrate that it disposes of an equity capital of 50.000,00 EUR (some enterprises are exempted from this requirement), see also above. Additional capital requirements arise from the different margining requirements (initial margin, variation margins etc.) for clearing of contracts.

Clearing and Settlement Arrangements:

The participation in clearing requires a clearing license which can be obtained by means of the conclusion of a clearing agreement with the European Commodity Clearing AG (ECC), a subsidiary of the EEX being a credit institution supervised by BaFin. A clearing license may be granted as a general clearing license or as a direct clearing license. Currently, there are only general clearers at the EEX. A general clearing license authorizes the holder to clear transactions on own account, customer transactions or transactions by non-clearing members. Non-clearing members are the Exchange Participants which are not licensed as clearing member.

Only certain institutions can obtain a clearing license (e.g. institutions based in a member state of EU or in Switzerland provided they have been licensed by the authorities in charge). Moreover, the clearing conditions require liable equity funds of the institutions (for a general



clearing license: the amount of at least 30 million EUR) and a contribution to a clearing funds with a minimum of 3 million EUR. In addition the applicant has to provide evidence of the following:

- A pledged-securities account at Clearstream Banking AG or SegInterSettle AG
- An account at the German Bundesbank
- Technical connections to the EUREX system
- Utilization of the adequate technological equipment (back office equipment) in order to ensure proper recording, booking and monitoring of all transactions as well as of the margins and the calculation of the required margins towards its customers in accordance with the minimum requirements by ECC
- The employment of at least one sufficiently qualified member of staff for the proper discharge of the clearing obligations at the back office. At least one sufficiently qualified member of staff must be available during trading hours.

There are furthermore product specific clearing conditions (e.g. for derivatives markets transactions in EU allowances).

Clearing members are required to inform EEC about circumstances which could lead to the lapse of the preconditions.

A clearing license may be terminated by the clearing member on written notice or by the ECC if the general preconditions were not fulfilled or have ceased to exist subsequently.

A clearing member shall be obliged to fulfil all payment obligations arising from all transactions by non-clearing members taking part in clearing on ECC via the clearing member.

A non-clearing member may be excluded from trading on the markets in their entirety or in part for the duration of any non-performance, if, for instance, it does not provide the margins specified by its clearing member or the daily settlement payments or if it does not fulfil any delivery obligations and/or purchase obligations, or obligations to effect payments, premiums or fees which are due. Furthermore, a non-clearing member may be excluded, if it exceeds a trade limit specified by the clearing member.

Beyond clearing of EEX traded contracts the ECC provides clearing services for contracts traded at European Energy Derivatives Exchange N.V. (ENDEX), as well as for OTC contracts for power and coal, as far as these contracts are comparable to those traded on the EEX or ENDEX and are registered via the EEX or ENDEX.

RMX

Trading methods:

Products of RMX are traded in continuous trading.

Membership regulation:

In accordance with section 16 of the German Exchange Act (*Börsengesetz* – BörsG) the board of management of the RMX decides upon written application on the admission of an enterprise wishing to participate in trading and on the admission of the person (exchange trader) participating in trading on behalf of an enterprise.

In accordance with section 16(4) BörsG, admission has to be granted if the person competent for the management of the enterprise is reliable and has the necessary professional qualification for securities business. Furthermore the orderly settlement of transactions has to be assured and the enterprise has to demonstrate that it disposes of an equity capital of



50.000,00 EUR (some enterprises are exempted from this requirement). For the requirements as set forth in section 16(4) BörsG see also above, “membership regulation of EEX”.

Enterprises listed at another “organised market” as defined under MiFID may only have to provide evidence for the orderly settlement of transactions (see section 12(2) of the RMX’s Exchange Rules). The orderly settlement of transactions is deemed to be granted if the following requirements are met:

- a) the market participants dispose of sufficient technical equipment ensuring an orderly execution of trading and settlement via the EDP-System of the RMX,
- b) with regard to trading in futures, a follow up agreement has to be settled between the exchange operating company and the market participant,
- c) the market participant has to maintain his technical equipment
- d) with regard to trading in futures, the market participant has to take part in the clearing procedure according to the RMX’s conditions of clearing.

With regard to the participation in the commodities market a market participant may be admitted as regular member, as market-maker or as intermediary.

Enterprises domiciled abroad may be admitted if they are subject to an effective supervision in their home state and if the supervisory authorities of the home state are willing to cooperate satisfactorily with German supervisory authorities on the basis of an MOU. Furthermore the foreign enterprise has to appoint an authorised agent for service of process in Germany.

After being admitted to trading, market participants are required to notify the RMX of every change which could result in the discontinuation of admission standards (see section 16 of the RMX Exchange Rules).

The admission to trading can be repealed on application of the market participant or if there is uncertainty with regard to the existence of admission standards.

Levels of trading transparency:

In accordance with section 24(2) sentence 3 of the German Exchange Act, section 43 of the RMX’s Exchange Rules sets forth that the board of management of the RMX shall publish all exchange prices and underlying transaction volumes. Publication shall take place at the next trading day at the latest. The information may be published in electronic media.

Furthermore, the website of RMX Commodities (www.rmx.eu) provides statistics containing the monthly and yearly volume traded in the segment of RMX commodities as well as documents containing an explanation of the contract codes and the high/low/open/last/settlement and traded volume of each contract for each day.

Capital requirements:

The enterprise wishing to participate in trading has to demonstrate that it disposes of an equity capital of 50.000,00 EUR (some enterprises are exempted from this requirement).

Clearing and settlement arrangements:

The Clearinghouse of the RMX becomes contractual partner in every future transaction executed at the RMX subject to the conditions on clearing.

All transactions in commodities are closed between the RMX and a clearing member.



Clearing members are such enterprises which have closed a clearing contract with the RMX. Clearing members either are “General Clearers” or “Clearing Names”. General Clearers execute clearing for the own enterprise or for other clearing contractual partners. Clearing names only execute clearing for their own business.

Admission standards for clearing members:

- equity capital: 2.500.000,00 EUR (General Clearers), 125.000,00 EUR (Clearing Names)
- Clearing members need to dispose of the necessary regulatory authorisation for clearing
- Clearing members need to supply a security by a credit institution recognised by the RMX (250.000,00 EUR for General Clearer, 25.000,00 for Clearing Names)
- Clearing members need to dispose of a technical link-up to the systems of the RMX AG
- Denomination of an account at a credit institution domiciled in Germany and accepted by the RMX AG
- Clearing members need to assure the use of appropriate technical equipment (back office) and orderly recording, booking, settlement and supervision of all transactions
- Clearing members need to allocate a sufficiently qualified employee for the execution of clearing and they need to ensure availability during business hours.

Clearing members have to inform the RMX about any substantial change, particularly about such changes that would result in the discontinuation of admission standards.

Every clearing member has to provide sufficient securities before a transaction is completed or an order is made in order to ensure the completion of its commitments.

The RMX AG operates a system for the hedging of completion of all transactions executed in the commodities segment

Question 6:

Both EEX and RMX are publishing current market prices as well as traded volumes per product. Historical market data are also available but must typically be paid for. The EEX offers a complete info-vendor package for market data as well as direct real-time market data. The EEX additionally makes transparent relevant information like availability of power plants, their capacity and net production. Publishing this information is not mandated by law, but requested by market participants for transparency reasons.

Other sources of information are OTC brokers, typically operating MTFs. These provide real-time or daily bids/offers and quotes for OTC trades in real-time or on a daily basis. This information is available to members of respective MTFs and/or can be bought. The EEX lists the following OTC brokers:

- Amerex Energy LLP (UK),
- Amstel Securities N.V. (UK),
- GFI Group Inc. (UK),
- Guardian AS (NL),
- ICAP Energy AS (NL),
- Spectron Energy Services Limited (UK),
- Tradition Financial Services GmbH (Germany),
- Tullet Prebon (Securities) Ltd. (UK).

Market participants may also obtain information from analysts. With regard to the energy market, for instance, Energy Brainpool provides daily price forecasts and analysis for the European electricity and carbon market.



Hungary

Question 1:

In order to ensure high level of consumer protection and with regard to the similarity with the activity of the securities brokers (broker-dealers) the provision of commodity exchange services (regarding commodities and commodity derivatives as well) is regulated by the Act CXX of 2001 on the Capital Market.

The above referred Act contains provisions on the following areas regarding commodity exchange services (providers):

- Initial capital
- Lincensing
- Organizational requirements
- Conduct of business (contracts etc.)
- IT systems
- Internal audit
- Supervision of commodities exchange providers

Number of commodity exchange service providers: 14.

Commodity exchange service provider are subject to the supervision of the HFSA.

Exotic derivatives are regarded as investment instruments (financial instruments).

Accurate information on the regulatory requirements regarding commodity exchange service providers can be provided after the implementation process. (The Ministry of Finance is responsible for the implementation.)

Question 2:

The Budapest Stock Exchange (BSE) is the only organized (regulated) trading venue for commodities and derivatives in Hungary. (Commodities and commodity derivatives are traded in the Commodity Section of the BSE.)

Question 3

The one and only trading venue (BSE) has the status of a regulated market and it is regulated by the Capital Market Act. It will be regulated by the “MiFID Act” after having implemented the directive.

Question 4

As the trading platform is a regulated market there are provisions in the referred Act regarding:

- Publicity (transparency) of exchange trading
- Conditions of the suspension of trading on the exchange
- Provisions regarding the settlement of the transactions
- Book keeping requirements and effectiveness of a transaction.

Requirements on exchange section membership are laid down in the internal rules of the Budapest Stock Exchange. (Members need license for the provision of investment or commodity exchange services issued by the HFSA on the basis of the licencing requirements included in the Capital Market Act and there are provisions on conflicts of interest, requirements on persons who direct the business, as well.)

Commodity or commodity derivatives transactions concluded on the BSE are cleared and settled by the Central Depository and Clearing House of Hungary (KELER).



Spot commodity transactions and those physically settled commodity derivatives for which there is no KELER rule to deliver the commodity by ware receipt are not subject to the CCP “guarantee” of the KELER.

Question 6

The Budapest Stock Exchange provides data on the concluded (executed) transactions on its website with a 15 minutes delay free of charge and real-time for fee through data vendors. The availability of information is mandated by the Act.

Ireland

Question 1:

Currently firms providing investment services in commodity derivatives are subject to regulation under the Investment Intermediaries Act, 1995 or the Stock Exchange Act, 1995. Such firms are currently subject to the Financial Regulator’s Consumer Protection Code and Client Asset Rules.

The rationale for regulation is mainly for investor/consumer protection purposes.

Question 2:

None

Question 3:

N/A

Question 4:

N/A

Question 6:

N/A

Italy

Question 1:

MiFID provisions on regulated markets and intermediaries will apply also to regulated markets on commodity and exotic derivatives and intermediaries dealing on such financial instruments. No exemptions, apart the one specifically mentioned by MiFID, will apply to commodity or exotic derivatives and to the relevant regulated markets.

As for commodities markets, the Italian Electricity Market is subject to the provisions of the Legislative Decree No. 79/1999 implementing the Directive 96/22/CE, of the Integrated Text of the Electricity Market Rules approved by Ministerial Decree of 19 December 2003 and of the implementing and procedural provisions set out in the market instructions and technical rules. Such provisions establish in particular the organisational and operational requirements of the market, requirements for the admission to trading, market transparency requirements, provisions on settlement, on guarantee and payment systems and on penalties and disputes. All such provisions are guided by the general principles according to which the Market management company (GME) exercises its functions in an open and non-discriminatory way;

GME has an organizational structure which is coherent with the prevention of real or potential conflicts of interest and uses control procedures to monitor conformity both to the Market Rules and the Technical Rules; Market Participants are required to conform in their activities in the market to common principles of honesty and good faith.

Question 2:

- 1) SeDex (Securitized Derivatives Markets), regulated market for covered warrant and certificates on different underlyings including commodities. Covered warrant and certificates fall within the definition of financial instruments;
- 2) Italian Electricity Market (or IPEX, Italian Power Exchange), organised market for electricity (spot).

Question 3:

SeDeX is a regulated market according to Article 1(13) of Directive 93/22/EEC (ISD) and it is registered in the list of the regulated markets pursuant to Article 16 of the ISD. SeDeX is managed by Borsa Italiana S.p.A. and it is oversight by Consob. After MiFID implementation it will maintain the status of regulated market.

Italian Electricity Market is an organised exchange managed by the Gestore Mercato Elettrico (GME). It is a spot commodity market for electricity and it was set up pursuant to the Legislative Decree no. 79 of 16 March 1999 which implemented the Directive 96/92/CE. The Integrated Text of the Electricity Market Rules were approved by Ministerial Decree of 19 December 2003. In case of breaches of Market Rules the GME may impose sanctions or penalties on market participants. After MiFID implementation it is not expected a change of status of the Italian Electricity Market, however it is possible that in the near future a regulated market on electricity derivatives will be set up.

Question 4:

SeDeX (Securitized Derivatives Market)

Market Operator: Borsa Italiana S.p.A.

Financial Instrument Traded: Covered warrant and certificates on different underlyings including commodities.

Trading: the market is order driven and the trading is divided into three phases: 1) opening auction; 2) continuous trading; 3) closing auction. During the continuous trading contracts are concluded, up to quantities available, through an automatic matching of the opposite sign orders present on the order book and ranked according to price and entry time. Liquidity is guaranteed by market makers subject to specific spread requirements.

Market Participants: national, EU and non-EU banks and investment firms authorised to provide the services specified under Article 1(5) letters a and b of the Legislative Decree No. 58/1998 (Consolidated law on Finance – CLF), i.e. dealing on own account and dealing for customers, and locals having their registered office in an EU member state that are authorised to trade in an EU market, that are subject in their home country to supervision by a public authority or a body recognised by a public authority with which Consob has entered into agreements for the supervision of their activity in Italian markets and that are subject in their home country to capital requirements and experience and integrity requirements for corporate officers and shareholders equivalent to those laid down in Community law for intermediaries dealing in financial instruments and such as will ensure an analogous degree of operational reliability.

Trading Transparency:

Information provided to market participants:

1. In the opening pre-auction phase: market participants shall have access to information updated in real time relative to reference prices, the control prices and the theoretical opening prices that are determined and the total quantities tradable at such prices, and any non-tradable quantities;

2. Throughout the Stock Exchange session: a) the trading book with all the individual buy and sell orders, showing the intermediaries that entered them, the quantities and the prices. The information is updated at the request of intermediaries; b) a summary of the trading conditions for each financial instrument, containing the trading parameters, the market phase, the reference price, the control price, the opening price, the last price, the best buy price, the best sell price and the cumulative volume of trades, updated in real time; c) the situation regarding the approved intermediary's own orders and trades, updated in real time; d) a list of the individual trades for each financial instrument, showing the time, quantity and execution price, updated in real time; e) the buy and sell quantities on the book for the five best prices, updated in real time;

3. In the closing pre-auction phase approved intermediaries shall have access to information updated in real time relative to the reference prices, the control prices and the theoretical closing prices that are determined and the total quantities tradable at such prices, and any non-tradable quantities.

Information available to the public

1. In the opening pre-auction phase the following information shall be available to the public in real time for each financial instrument: a) the theoretical opening price and related tradable quantity; b) the prices and quantities of the best buy and sell orders; c) the control price; d) the buy and sell quantities on the book for the five best prices.

2. During continuous trading the following information shall be available to the public in real time for each financial instrument: a) the prices and quantities of the best buy and sell orders; b) the buy and sell quantities on the book for the five best prices; c) the price of the last contract concluded, the time of execution and the quantity traded; d) the cumulative quantity and value traded; e) the control price.

3. In the closing pre-auction phase the following information shall be available to the public in real time for each financial instrument: a) the theoretical closing price and related tradable quantity; b) the prices and quantities of the best buy and sell orders; c) the control price; d) the buy and sell quantities on the book for the five best prices.

4. In terms of post-trade transparency: a) number of contracts concluded; b) total quantity traded; c) the lowest and the highest prices; d) the opening-auction, closing-auction and official prices.

Clearing and Settlement arrangements: No Central Counterparty for Clearing. Transactions are settled at T+3 in Monte Titoli (The Italian Central Securities Depository).

Italian Electricity Market (or IPEX Italian Power Exchange): Spot market

Market Operator: Gestore Mercato Elettrico (GME)

Commodities Traded: Electricity

Trading: Auction market. Bids and offers are accepted after the closing of the market. Accepted supply offers are valued at the equilibrium price of the respective area. Accepted purchase offers are valued at the Single National Price.

Market Participants: Terna S.p.A. (The Grid Operator), the Single Buyer, domestic and foreign producers, wholesale customers and importers of electricity.

Guarantee System: Market participants must provide financial guarantees, in the form of unconditional first demand guarantee bonds.

Market Transparency: the Single National Price and the prices of the relevant areas are available to the public on the GME's website.

Clearing and Settlement arrangements: GME is the central counterparty. Settlement follows specific dispatching procedures of the electricity market.

Question 6:

As for SeDeX, according to Article 62 of the CLF, market operators have to establish specific procedures for the verification, publication and dissemination of prices to both market members and to the public. Market rules, subject to CONSOB approval, establish the conditions and procedures for publishing and distributing prices (see question 4). The main information source for market participants is the exchange trading platform. Data are also available from information and trading platforms providers both in real time (subject to a fee per user) and with 15 minutes delayed (free of charge). Delayed data are also available on the Borsa Italiana's website.



As for the IPEX, according to Article 8 of the Integrated Text of the Electricity Market Rules, the summaries of data and market information are of public domain and are published on GME's website. Each Market Participant has access to the data and market information which directly concerns them.

Luxembourg:

Question 1:

There are actually no specific provisions in Luxembourg relating to commodities, commodity and exotic derivatives. For the time being, there is no commodity market which has been authorized to operate in Luxembourg. If the commodity or exotic derivatives may be classified as transferable securities, they may be admitted to trading on one of the markets operated by the Luxembourg Stock Exchange.

Commodity or exotic derivatives which are considered as transferable securities are subject to the general laws and regulations in the securities field (e.g. law of 9 May 2006 on market abuse, the law of law of 10 July 2005 on prospectuses etc.). Financial intermediaries which are dealing in those kind of securities or in commodity or exotic derivatives which are considered as financial instruments have to comply with the provisions of the law of 5 April 1993 on the financial sector, as amended (including conduct of business rules). These principles will be adapted (no fundamental change on the scope has been foreseen by the draft law) to those laid down in Mifid with the transposition of the said Directive.

The rationale for the existence of the "general" laws and regulation is market integrity and investor protection. The CSSF is the competent authority for the supervision of the intermediaries providing services/trading in those markets.

Question 2:

For the time being, there is no trading venue in Luxembourg that provides services exclusively in commodities, commodity and exotic derivatives. If the commodity or exotic derivatives may be classified as transferable securities, they may be admitted to trading on one of the markets operated by the Luxembourg Stock Exchange.

Question 3:

N/A as there is for the time being no such trading venue

Question 4:

N/A as there is for the time being no such trading venue.

Question 6:

N/A as there is for the time being no such trading venue

Malta:

Background

In Malta there are only a few investment firms which are authorised to provide services in relation to derivatives which could include commodity or exotic derivatives. There are no derivatives traded on the Malta Stock Exchange which is Malta's only regulated market.

Question 1:



Current regulatory standards

The Malta Financial Services Authority is the single regulator for all types of financial services which is provided in or from Malta. The Investment Services Act, 1994 is the Act which inter alia provides for the authorisation and regulation of investment services provided in or from Malta.

Malta does not have a regulatory regime specifically covering the regulation of commodity or exotic derivatives. The Maltese securities regulatory regime as it stands today does not distinguish, from an on-going regulation point of view, between an investment firm providing services in relation to derivatives and investment firms providing services in relation to other financial instruments. By way of example, all firms, whether providing investment services in relation to derivatives or other financial instruments, must abide by the current conduct of business rules including the best execution requirement.

The same applies to regulated markets. In fact the Financial Markets Act, 1990 which regulates the operations of regulated markets in Malta applies as is to all types of financial instruments which are admitted to listing. Moreover, the regime in Malta for the regulation of market abuse also applies to transactions in derivatives.

Rules transposing the MiFID

MiFID is being transposed by way of amendments to the Investment Services Act, 1994, the Financial Markets Act, 1990 and amendments to current regulations made thereunder and the issue of new regulations and rules [hereinafter altogether referred to as the Maltese MiFID Requirements]. The Maltese MiFID Requirements inter alia provide for the regulation of [a] entities providing services in relation to derivatives; and [b] regulated markets on which derivatives are listed. By and large the provisions of the Maltese MiFID Requirements mirror the provisions of MiFID. Accordingly, by way of example, the transparency provisions in the new Financial Markets Regulations transposing the MiFID, are only applicable to shares listed on a regulated market and not to other financial instruments. This notwithstanding the Malta Stock Exchange has undertaken to apply its transparency regime to all financial instruments listed on the Exchange.

Question 2:

No trading venues in Malta deal in such instruments.

Question 3:

N/A - Please refer to our reply to question 2 above

Question 4:

N/A - Please refer to our reply to question 2 above.

Question 6:

N/A - Please refer to our reply to question 2 above.

The Netherlands

Question 1:

Commodity derivatives market: ENDEX (www.endex.com)

- Endex offers a trading platform for gas and power futures;



- Nature of regulation: financial markets conduct, i.e. conduct of business, market abuse, fair and orderly market;
- Rationale for the existence of the regulation is to promote an orderly and transparent market process on the financial markets, the integrity of relations between market players and the protection of the consumer;
- Only competent authority involved is the Netherlands Authority for the Financial Markets (AFM);
- ENDEX will probably be authorised as a Regulated Market and therefore has to comply with MiFID. No additional national requirements will apply.

Commodity market: APX (www.apxgroup.com)

- APX offers a trading platform for spot gas and spot power contracts;
- Nature of regulation: network and price regulation;
- Rationale for the existence of the regulation is security of supply and market/price stability;
- Competent authority involved is DTE (Office of Energy Regulation) a division of the Netherlands Competition Authority (NMa). No other authorities involved;
- No regulation requirements due to MiFID because traded instruments are spot-contracts which do not qualify as financial instruments

Commodity market: Climex/New Values (www.newvalues.net)

- Newvalues offers a trading platform for spot carbon emissions rights;
- Nature of regulation: no regulation;
- No authorities involved;
- No regulation requirements due to MiFID because traded instruments are spot-contracts which do not qualify as financial instruments

Question 2:

Endex European Energy Derivatives Exchange N.V., operator of Endex Futures Exchange (www.endex.com)

Products:

- Monthly, Quarterly and Calendar year future contracts with delivery of power on the Dutch national grid as underlying value;
- Monthly, Quarterly and Calendar year future contracts with delivery of gas on the Dutch national grid as underlying value;

APX Group, operator of APX (www.apxgroup.com)

Products:

- Day ahead market with physical delivery of power on the Dutch national grid;
- Day ahead market with physical delivery of gas on the Dutch national grid.

New Values, operator of the Climex platform (www.newvalues.net)

Products:

- Spot transactions in EU Carbon Emission Allowances
- Bilateral Forward transactions in EU Carbon Emission Allowances

Question 3:

Endex European Energy Derivatives Exchange N.V., operator of Endex Futures Exchange (www.endex.com)

- Recognised securities exchange



- Not a Regulated Market according to the ISD
- Regulated Market following MiFID implementation

APX Group, operator of APX (www.apxgroup.com)

- Gas Exchange according to the Dutch Gas Act
- Power Exchange according to the Dutch Electricity Act
- No status of a security exchange as traded products are not considered to be financial instruments
- No status of Regulated Market or MTF following MiFID implementation

New Values, operator of the Climex platform (www.newvalues.net)

Products:

- No status of a security exchange as traded products are not considered to be financial instruments
- No status of Regulated Market or MTF following MiFID implementation

Question 4:

Endex European Energy Derivatives Exchange N.V., operator of Endex Futures Exchange (www.endex.com)

Main trading method	Continuous auction order book system combined with liquidity provider agreements
Membership regulation	Participants are bound by the Endex Rulebook Participants are exempted from a license according to Dutch Securities Law
Trading transparency	Best bid – best offer
Capital requirements	Endex is obliged to have a minimum own capital of € 5 mio
Clearing & Settlement	European Commodity Clearing AG acts as central counterparty

APX Group, operator of APX (www.apxgroup.com)

Main trading method	Continuous auction order book system
Membership regulation	Participants are bound by the APX Rulebook Participants do not fall within the scope of Dutch Securities Law
Trading transparency	Best bid – best offer
Capital requirements	No capital requirements
Clearing & Settlement	No central counterparty

New Values, operator of the Climex platform (www.newvalues.net)

Main trading method	Continuous auction order book system
Membership regulation	Participants are bound by the NewValues Rulebook Participants do not fall within the scope of Dutch Securities Law
Trading transparency	Best bid – best offer
Capital requirements	No capital requirements
Clearing & Settlement	No central counterparty. Bilateral agreements

Question 6:

Market participants rely on the following information:

- bid and offers from the screens;
- price and flow updates from brokers;
- turnover reports provided by data vendors.

Endex European Energy Derivatives Exchange N.V., operator of Endex Futures Exchange has a pricing panel in place.

Currently, Dutch securities law doesn't provide for transparency provisions.

Norway:

Question 1:

Electricity market

The Nordic region is Denmark, Sweden, Finland and Norway. The spot wholesale physical market for electricity trading in the Nordic region is operated by Nord Pool Spot (NPS) as a monopolized activity. The spot market at NPS is auction based, trading hourly delivery contracts, 24-36 hours in advance of the delivery hour. The spot market is the underlying market for the electricity derivatives market at the commodity derivatives exchange Nord Pool, and the spot price (the market clearing price) is used as reference price for this market. Price areas for physical market inside the Nordic region exist when grid capacity is too low to transfer the wanted transmission. All electricity derivatives traded contracts are cleared in Nord Pool Clearing (NPC). OTC-contracts with the same conditions as exchange-traded electricity derivatives may be cleared in NPC. Nearly all exchange and otc-traded contracts in listed products are cleared by NPC. NOS Clearing intend to start otc-clearing of electricity derivatives of all derivatives listed on the electricity exchanges in Europe, including the Nordic region.

No price regulation either in wholesale market or end user market. Market Abuse Directive is implemented.

Nature of regulation

The electricity derivatives are fully financial products with no responsibility for physical delivery. However, the market is designed in a way that volumes with a secured price in the derivatives market will be, if wanted, delivered by the electricity spot market.

Brokers in the electricity derivatives market do not need any license, but must comply with Market Abuse Directive in exchange-traded products. All the investors in this market are seen as professionals and the investors are the binding counterparts in clearing & settlement, even if the contracts are cleared by a clearinghouse. The brokers do not deal on own account.

Rationale for the existence of the regulation

The financial products listed at Nord Pool do not contain any obligations of physical delivery. Contracts in the financial market may be traded independent of the contracts in the physical market.

All market participants in the physical electricity market are supervised by the specific market supervisor, and all market participants in the financial market are supervised in general by the financial supervisory.

All investors are seen as professionals, no investor protection is needed. The brokers do not deal on own account and licensing of the brokers is not seen as necessary.

Competent authorities

Kredittilsynet supervise the financial market, Nord Pool as an exchange, and NPC and NOS Clearing as clearinghouses. The Norwegian Water Resources and Energy Directorate (NVE) supervise the physical electricity market – production companies, retailer companies, grid owners, the Nordic spot market at Nord Pool Spot AS (NPS), the physical balancing market at Statnett and the national system operator Statnett (TSO). The Norwegian Competition Authority supervises particularly misuse of market power and excessive market co-operation in this market.



Relevant changes after MiFID-implementation

Trading in otc-contacts in listed electricity derivatives products not cleared by a clearinghouse will be defined as financial instruments.

Electricity derivatives brokers may need a license to be able to trade non-cleared otc-contracts in exchange-listed products.

Climate market

Nature of regulation

EUAs and CERs are traded on many exchanges in Europe. The clearinghouse if cleared, will be responsible for physical delivery of EUAs and CERs, if participants fail to deliver. The participants may deliver to the clearinghouse in advance of delivery date and will be rewarded with reduced margin requirements.

Brokers in the climate derivatives market do not need any license, but must comply with Market Abuse Directive in exchange-traded products. All the investors in this market are seen as professionals and the investors are the binding counterparts in clearing & settlement, even if the contacts are cleared by a clearinghouse. The brokers do not deal on own account.

No price regulation. Market Abuse Directive is implemented.

Rationale for the existence of the regulation

Climate derivatives are defined as commodity derivatives because they are derivatives traded on a Norwegian exchange. The EUAs and CERs are seen as physical underlying because they may be physically delivered, and do have a value that may be transparent at a spot market. Whether the climate itself is possible to deliver or not is of no relevance.

Competent authorities

Kredittilsynet supervise the financial market, Nord Pool as an exchange, and NPC as a clearinghouse. There is no supervision of the physical climate market in Norway.

Relevant changes after MiFID-implementation

Climate derivatives products are defined as exotics, but this seems not to be of any relevant changes for the market participants.

Green certificate market

Nature of regulation

The green certificate derivatives listed at Nord Pool are fully financial products with no responsibility for physical delivery.

Brokers in the green certificate derivatives market do not need any license, but must comply with Market Abuse Directive in exchange-traded products. All the investors in this market are seen as professionals and the investors are the binding counterparts in clearing & settlement, even if the contacts are cleared by a clearinghouse. The brokers do not deal on own account.

Market Abuse Directive is implemented.

Rationale for the existence of the regulation



Climate derivatives are defined as commodity derivatives because they are derivatives traded on a Norwegian exchange. The green certificates are seen as physical underlying because they may be physically delivered, and do have a value that may be transparent at a spot market.

Competent authorities

Kredittilsynet supervise the financial market, Nord Pool as an exchange, and NPC as a clearinghouse. There is no supervision of the physical certificate market in Norway, but the certificate market is supervised by competent authority in Sweden.

Relevant changes after MiFID-implementation

Green certificate derivatives products are defined as exotics, but this seems not to be of any relevant changes for the market participants.

Freight market

Nature of regulation

The freight derivatives listed at International Maritime Exchange ASA (Imarex) are fully financial products with no responsibility for physical delivery.

No price regulation. Market Abuse Directive is implemented.

Rationale for the existence of the regulation

Freight derivatives are defined as commodity derivatives because they are derivatives traded on a Norwegian authorised market.

Competent authorities

Kredittilsynet supervise the financial market, Imarex as an authorised market, and NOS Clearing as a clearinghouse. There is no supervision of the physical climate market in Norway. The physical underlying market is Baltic Exchange in London.

Relevant changes after MiFID-implementation

Freight derivatives products are defined as exotics, but this seems not to be of any relevant changes for the market participants.

Salmon market

Nature of regulation

The salmon derivatives listed at FishEx and Fish Pool are fully financial products with no responsibility for physical delivery. Contracts traded at FishEx will be cleared by Nord Pool Clearing and contracts traded at Fish Pool will be cleared by NOS Clearing.

No price regulation, but the European Union has price regulation influencing the wholesale market in the EU-area. Market Abuse Directive is implemented.

Rationale for the existence of the regulation

Salmon derivatives are defined as commodity derivatives because they are derivatives traded on Norwegian authorised markets.

Competent authorities



Kredittilsynet supervise the financial market, FishEx and Fish Pool as an authorised markets, and NOS Clearing as a clearinghouse. There is no physical spot market for salmon in Norway. The physical underlying consists of an index.

Relevant changes after MiFID-implementation

Trading in otc-contacts in listed salmon derivatives products not cleared by a clearinghouse will be defined as financial instruments.

Salmon derivatives brokers may need a license to be able to trade non-cleared otc-contracts in exchange-listed products.

Question 2:

Current status:

Nord Pool ASA – situated in Oslo, Norway www.nordpool.com

Supervised by Kredittilsynet

Non-mandatory, otc-brokers exist, bilateral trading exist

Exchange trading commodity derivatives as financial instruments:

- Nordic Electricity Derivatives
- Climate derivatives – European Union Allowances and Certified Emissions Reduction
- Green certificates derivatives

Nord Pool Spot AS – situated in Oslo, Norway www.nordpoolspot.com

Supervised by The Norwegian Water Resources and Energy Directorate (NVE)

Non-mandatory, bilateral trading exist

Market place for spot trading of contracts for physical electricity in the Nordic countries – day-ahead auction based market

Statnett SF – situated in Oslo, Norway www.statnett.no

Supervised by The Norwegian Water Resources and Energy Directorate (NVE)

Mandatory for all market participants with physical delivery requirements

Market place for spot trading of contracts for physical electricity in Norway – realtime market

International Maritime Exchange ASA– situated in Oslo, Norway www.imarex.com

Supervised by Kredittilsynet

Non-mandatory, otc-brokers exist

Authorised market (exchange) trading commodity derivatives as financial instruments:

- Freight derivatives
- Bunkers

FishEx ASA – situated in Bergen, Norway www.fishex.no

Supervised by Kredittilsynet

Non-mandatory, otc-brokers may exist, bilateral trading exist

Authorised market (exchange) trading commodity derivatives as financial instruments:

- Atlantic salmon

Fish Pool ASA – situated in Tromsø, Norway www.fishpool.eu



Supervised by Kredittilsynet
Non-mandatory, otc-brokers may exist, bilateral trading exist
Authorised market (exchange) trading commodity derivatives as financial instruments:
- Atlantic salmon

Question 3:

Status after MiFID implementation:

Nord Pool ASA

Exchange trading commodity derivatives and exotic derivatives as financial instruments

Nord Pool Spot AS

Market place for spot trading of contracts for physical electricity in the Nordic countries – day-ahead auction based market

Statnett SF

Market place for spot trading of contracts for physical electricity in Norway – realtime market

International Maritime Exchange ASA

Authorised market (exchange) trading exotic derivatives as financial instruments

FishEx ASA

Authorised market (exchange) trading commodity derivatives as financial instruments

Fish Pool ASA

Authorised market (exchange) trading commodity derivatives as financial instruments

Question 4:

Nord Pool ASA

Main trading methods

- Continues fully electronic trading, but with help desk

Membership regulation

- Mandatory membership, approved by the exchange and clearinghouse, investors as direct members

Trading transparency

- Electronic trading with market prices in realtime, public internet application with prices delayed with app. 15 minutes. Real time prices are available for non-members at additional cost.

Capital requirement

- Requirements in accordance with the exposed risk at the exchange, no clearing and settlement obligations by the exchange, but done in an own entity in the same corporation (Nord Pool Clearing ASA)

Clearing & settlement

- Mandatory through Nord Pool Clearing ASA, an entity supervised by Kredittilsynet



Nord Pool Spot AS

Main trading methods

- Auction based, trading hourly delivery contracts, 24-36 hours in advance of the delivery hour.

Membership regulation

- Mandatory membership, approved by the market place

Trading transparency

- Hourly prices and trading volumes etc. published daily at the NPS website as public information

Clearing & settlement

- Mandatory as post-payment after trading, no margin requirements

Statnett SF

Main trading methods

- Auction based, trading hourly delivery contracts, normally 4,5-28,5 hours in advance of the delivery hour.

Membership regulation

- Mandatory membership for all market participants with physical delivery requirements

Trading transparency

- Hourly prices and trading volumes etc. published after the delivery hour as public information at Statnett website

Clearing & settlement

- Mandatory as post-payment after trading, no margin requirements

International Maritime Exchange ASA

Main trading methods

- Continues fully electronic trading, but with help desk

Membership regulation

- Mandatory membership, approved by the exchange and clearinghouse, investors as direct members

Trading transparency

- Electronic trading with market prices in realtime, public internet application with daily market prices and trading volumes for main products. Real time prices are available for non-members at additional cost.

Capital requirement

- Requirements in accordance with the exposed risk at the authorised market, no clearing and settlement obligations by the exchange, but done voluntarily in an own entity in the same corporation (NOS Clearing ASA)

Clearing & settlement

- Non-mandatory through NOS Clearing ASA, an entity supervised by Kredittilsynet

FishEx ASA

Main trading methods

- Continues fully electronic trading, but with help desk

Membership regulation

- Mandatory membership, approved by the exchange and clearinghouse, investors as direct members, but general clearing members will be established

Trading transparency

- Electronic trading with market prices in realtime.



Capital requirement

- Requirements in accordance with the exposed risk at the exchange, no clearing and settlement obligations by the authorised market, but done voluntarily in an own entity (Nord Pool Clearing ASA)

Clearing & settlement

- Non-mandatory through Nord Pool Clearing ASA, an entity supervised by Kredittilsynet

Fish Pool ASA

Main trading methods

- Continues fully electronic trading, but with help desk

Membership regulation

- Mandatory membership, approved by the exchange and clearinghouse, investors as direct members, general clearing members may be established

Trading transparency

- Electronic trading with market prices in realtime. public internet application with weekly market prices and trading volumes.

Capital requirement

- Requirements in accordance with the exposed risk at the exchange, no clearing and settlement obligations by the authorised market, but done voluntarily in an own entity (NOS Clearing ASA)

Clearing & settlement

- Non-mandatory through NOS Clearing ASA, an entity supervised by Kredittilsynet

Question 6:

Electricity market

Urgent Market Messages (UMM) are official exchange information messages. The UMMs are distributed by the exchange Nord Pool to all members and publicly available on Nord Pools website. The UMMs consists of information stated as price sensitive information in accordance with the provisions in the exchange member trading rules. The exchange also distributes plans and conditions from the system operators, and other market premise providers, that may influence on the market price. The information is distributed on a regularly basis and made publicly available at Nord Pool website.

In addition, relevant water reservoirs in the Nordic region, snow reservoirs, relevant grid conditions and other electricity production data are made available for the market participants and publicly by the Nordic system operators, NVE, other Nordic authorities, Nord Pool and/or Nord Pool Spot. The data are distributed publicly on their respective websites. To be able to distribute the relevant data all electricity producers, grid owners and others are obliged to report relevant information to the relevant authority.

Climate market

The prices in the climate market are connected to the prices in the electricity market. All relevant information in the electricity market is relevant for the prices in the climate market.

Main information of EU allowances from the Commission related to National Allocation Plans and data of other system premises are made available through the EU Commission when necessary.

Green certificate market



The prices in the green certificate market are to some extent connected to the prices in the electricity market. All relevant information in the electricity market is to some extent relevant for the prices in the green certificate market.

No particularly other information is mandated by law in this market.

Freight market

No particularly information is mandated by law in this market.

Salmon market

All participants responsible for distribution of Salmon abroad from Norway are obliged to give information of contractual volumes and related prices agreed upon. The data are collected by the official Statistics of Norway (SSB) and published as aggregated data by SSB and the two authorised markets weekly.

Portugal

Question 1:

This questionnaire applies only to the derivatives market of the Iberian Electricity Market (MIBEL), launched in July 2006.

a) Market Organization

MIBEL constitutes a joint initiative from the Governments of Portugal and Spain, aimed at the development of an internal electricity market. With the materialisation of MIBEL, it becomes possible for any consumer in the Iberian zone to acquire electrical energy under a free competition regime, from any producer or retailer that acts in Portugal or Spain.

MIBEL has two divisions, the spot market and the derivatives market. The spot market is operated by the Spanish OMEL - Operador del Mercado Ibérico de Energía - Polo Español, S.A., while OMIP - Operador do Mercado Ibérico de Energia - Pólo Português, S.A. is the operator of the Portuguese division of MIBEL, which is responsible for the management of trading on the derivatives market.

OMIP holds a 100% stake in OMIClear - Sociedade de Compensação de Mercados de Energia, S.A. which takes on the role of Clearing House and Central Counterparty in all the operations executed on the market managed by OMIP, being able to also clear trades on the OTC market or even other markets that have, as underlying assets, energy based products, or such like.

i) OMIP

OMIP was constituted on June 16th 2003 by REN, as sole shareholder, with a share capital of 1.000.000 Euros. It is the managing entity responsible for the organisation of the Portuguese division of MIBEL, ensuring the management of the MIBEL derivatives market, jointly with OMIClear, a company constituted and totally owned by OMIP.

On January 16th 2004, OMIP performed a capital increase to 2.222.220 Euros, with the entry of a new shareholder, OMEL, with REN now holding 90% of the capital and OMEL the remaining 10%. In exchange, OMIP now holds 10% of OMEL capital.

As managing entity responsible for the derivatives market Trading Platform, OMIP performs a number of tasks necessary for the regular running of the market, namely:

- Admission of participants;



- Definition and listing of the Contracts, as well as managing their trading;
- Support, in coordination with OMIClear, of the registration of Operations;
- Publishing information, which is relevant to the participants and the public in general relative to the running of the derivatives market, namely through a market report
- Supervision, in coordination with the Supervisory Entities, of the market's management;
- Implementation of disciplinary powers in relation to its members

ii) OMIClear

OMIClear is the entity responsible for the tasks of Clearing House and Central Counterparty of operations executed on the MIBEL derivatives market. It was constituted on April 6th 2004, with a share capital of 2.500.000 Euros, with OMIP as sole shareholder and sharing the various activity support functions, in order to strengthen synergies.

As managing entity responsible for the Clearing Platform of the Iberian derivatives market, OMIClear performs a series of functions required for the regular and correct clearing and settlement of operations, namely:

- Admission of participants in the registration, clearing and settlement of operations;
- Support of the registration of operations and respective clearing and settlement;
- Taking on the position of Central Counterparty in the registered operations;
- Definition of the calculation formula and consequently the calculation and management of the guarantees due for the registration of operations and from carrying out Clearing Member functions;
- Control of the risk taken on by the holders of registered positions;
- Supervision, in coordination with the Supervisory Entities, of the procedures of registration, clearing and settlement of operations;
- Implementation of disciplinary powers in relation to the Clearing Members.

Through novation, OMIClear takes on the position of Central Counterparty to all operations it has registered, guaranteeing the fulfillment of obligation of both parties. In fact, once an operation is registered OMIClear manages the resulting positions, through its interposition as (central) counterparty of the operations, becoming the buyer in relation to a seller and a seller in relation to a buyer.

With a view to guaranteeing the adequate performance of its functions and guaranteeing the credibility of the market, OMIClear uses various systems and procedures to control the risk taken on by market participants in relation to the registered positions, such as the deposit and management of guarantees.

OMIClear is initially the Clearing House of the Derivatives Market managed by OMIP. Subsequently, in line with the evolutionary conditions of the market it is foreseen that it will provide identical services for products traded on OTC (bilateral contract), as well as in relation to other energy based products by taking advantage of the infrastructures and connections that have in the meantime been put into place.

OMIClear completely takes on its Iberian role, where equal conditions for intervention on the market by all participants have been created.

b) Legal Framework

The legal framework for the organisation of MIBEL and the Derivatives Market is based on the "Agreement between the Portuguese Republic and the Kingdom of Spain relative to the constitution of an Iberian Electrical Energy Market" ("MIBEL Agreement"), signed by the respective governments, on October 1st 2004. This Agreement establishes the general principles for the organisation and management of MIBEL and, in particular, the framework for the organisation of the Cash Market and the Derivatives Market

Under the terms of the "MIBEL Agreement", despite its cross-border activity, the MIBEL Derivatives Market is a market directly subject to Portuguese law and jurisdiction.

Presently and due to its financial nature, independent of any other legislation that may be imposed on MIBEL, the Derivatives market is subject to the legislation applicable to this type of markets, predominantly:

- Securities Code;
- Securities Market Commission (CMVM - Comissão do Mercado de Valores Mobiliários) Regulations
- CMVM Instructions

The following should also be considered:

- Decree n.º 945/2004, of July 28th, which authorises OMIP to manage the Derivatives Market;
- Decree n.º 927/2004, of July 27th, which authorises OMIClear to act as Clearing House and Central Counterparty for derivatives operations on MIBEL.
- Decree-Law No. 394/99, of 13 October (with the amendments introduced by Decree-Law No. 8-D/2002, of 15 January) - approves the legal requirements for the restructuring and reorganisation of the operators of the securities markets, both regulated and non-regulated, and of entities providing services related to the operation of these markets.

c) Supervision/Regulation

Under the terms of the "MIBEL Agreement", the regulation and supervision of MIBEL (spot and derivatives market) is carried out by CMVM, ERSE - Entidade Reguladora dos Serviços de Energia (Regulatory Entity for Energy Services), as the entity responsible for the regulation of the natural gas and electricity segments in Portugal and the equivalent Spanish Authorities, the National Energy Commission (Comisión Nacional de Energía -CNE) and the National Securities Market Commission (Comisión Nacional del Mercado de Valores - CNMV).

Also, without prejudice of supervision and oversight powers of any supervision entities:

- OMIP will conduct the supervision of the normal operation, the transparency and the adequate price formation on the market, as well as the adoption of all the measures deemed necessary for detecting or preventing any fraudulent, illicit or wrong action taken by the participants³;
- OMIClear will conduct the supervision of the normal operation, the transparency of clearing and settlement of positions registered with it and shall adopt all measures deemed necessary for detecting or preventing any fraudulent, illicit or wrong action taken by the participants⁴.

In relation to the underlying asset, the legislation and regulation specific to the electric sector is applicable.

d) Market Abuse Regulation

As for market abuse, there is no specific regulation, it falls under the general provisions of the Portuguese Securities Code⁵.

e) Conduct of Business regulation

OMIP's trading rulebook⁶ determines that when acting on the market the participants shall:

³ Article 67 of the Trading Rulebook.

⁴ Article 60 of the OMIClear Clearing Rulebook.

⁵ Article 248 to 251 of the Decree-Law No. 486/99 of 13 November, with the amendments introduced by Decree-Laws No. 61/2002 of 20 March, No. 38/2003 of 8 March, No. 107/2003 of 4 June, No. 183/2003 of 19 August, No. 66/2004 of 24 March, No. 52/2006 of 15 March and No. 219/2006 of 02 November.

- comply with high standards of integrity, market conduct and correctness on trading;
- act with due diligence and care;
- refrain from taking any action or adopt any conduct that may cause damage to the integrity and the transparency on the market or on the normal running of trading as well as leading into error the other participants.

The trading rulebook also predicts sanctions for infringements⁷.

As for OMIClear, the clearing rule book⁸ states that, in the course of their activity, clearing members and settlement agents shall:

- comply with high standards of diligence, integrity and transparency;
- act in accordance with high standards of professional ability;
- refrain from taking any action or adopt any conduct that may cause damage to the normal running, the transparency and the credibility of th activity performed by OMIClear.

The clearing rule book also predicts sanctions for infringements⁹.

f) MiFID

As for regulatory requirements as they will be in force from the implementation date of the MiFID, it will depend on the future status of MIBEL. It is currently an organized non-regulated market but, following MiFID implementation, it is expected to change into a regulated market. In that case, there will be regulatory adjustments to be made since the requirements for entities operating non-regulated markets differ from those of the entities operating regulated markets.

Question 2:

a) Organized trading venues

MIBEL Derivatives Market

b) Products

There are two types of contracts that can be admitted to trading in MIBEL Derivatives Market

- futures and forwards. Currently only futures are admitted to trading;
- Physical futures contracts. The underlying is the supply electricity at constant power of 1 MW during all the hours of the delivery period. There are four different maturities: weekly, monthly, quarterly and annually.
- Financial futures contracts. The underlying is the notional supply electricity at constant power of 1 MW during all the hours of the delivery period. There are four different maturities: weekly, monthly, quarterly and annually.

Question 3:

MIBEL is currently an organized non-regulated market. Following MiFID implementation its status is expected to change to a regulated market, but there is no final decision.

Question 4:

a) Main trading methods

⁶ Article 66.

⁷ Chapter VII.

⁸ Article 59.

⁹ Section II.



On the OMIP Trading Platform, futures contracts are traded. All the elements of these contracts are standardised (e.g. volume, underlying, minimum price variation). Therefore, when a participant opens a position, it needs only to choose the contract it will trade, the respective quantity and the price (except if it is a "market offer"). A key characteristic of these contracts is based on the fact that they have daily mark-to-market.

The operations carried out on OMIP are registered in trading accounts and simultaneously registered in clearing accounts, through which the financial settlement of the contracts is performed.

After opening a position on a MIBEL Future, a participant has a number of alternatives to close that position:

- Carry out an opposite operation (if initially it bought, then it needs to sell, if it initially sold, it needs to buy) on the same Futures contract.
- Leave the position open until the contract's maturity.
 - If the positions are registered in the physical trading account, the information on the respective net position will be sent to OMEL to be integrated in the Cash Market management process.
 - If not, there will be a purely financial settlement based on the difference between the spot reference price and the trading settlement price on the last trading day.

During the trading period, it is also possible to carry out operations on Futures contract from different series, allowing the management of market risk, cancelling or minimising portfolio risk. The same applies to a position on a contract that is in its delivery period.

All the orders introduced onto the OMIP Trading Platform are valid if within the pre-established price limits. If a Trading Member inputs an offer with a higher (lower) price than the maximum (minimum) price limit defined for the contract in question, the Trading platform considers the order invalid by rejecting it.

The MIBEL Derivatives Market is based on a Trading Platform managed by OMIP, closely interlinked with a Clearing Platform, managed by OMIClear, using a common technological system.

Besides OMIP and OMIClear providing each member with a terminal to manage their activity, there is also a Trading API and Clearing API available.

The access requirements and conditions to the technological platform depend on each market agent's intervention, where the Technological Access Guide details, amongst others:

- Systems Access
- The respective technical requirements at the network communications level
- Indications regarding information technology means and security mechanisms

b) Membership regulation

The direct participants of the MIBEL Derivatives Market are called Trading Members and Clearing Members, which take on the respective functions according to the role chosen. Besides these, there are also agents that provide complementary settlement services, namely Settlement Agents

i) Trading Members: The Trading Members are members of OMIP, participating directly on the OMIP trading platform, introducing orders relative to the contracts open for trade.

In line with its legal status, or its positioning on the market, a Trading Member can become one of the following categories:

- Trading Member for own/house account (Dealer), introducing orders exclusively for itself or for entities that are under its control or within the same group.



- Trading Member for third parties (Broker), introducing orders exclusively on behalf of clients.
- Trading Member for own account and third parties (Broker-Dealer), introducing orders for both its own account as well as for clients.

A Trading Member can also become a Market Maker. A Market Maker, acting for its own account and under the terms of the Market Making Agreement signed with OMIP, in exchange for other benefits, undertakes to introduce onto the market buy and sell orders with minimum quantity limits and maximum spread limits, for a given number of contracts and during a minimum predefined period of time.

The main requirements to become a Trading Member are:

- To be legally able to act on MIBEL, being, obligatorily, a company.
- To be able to clear, be it by becoming a Clearing Member or alternatively signing a Clearing Agreement with a Clearing Member;
- To hold the appropriate human, technical and operational resources to execute operations on the markets managed by OMIP;

ii) Clearing Members: The Clearing Members are members of OMIClear, which, through direct access to the OMIClear clearing platform, participate in the clearing and settlement procedures of operations registered on OMIClear. The Clearing Members register, manage and settle the operations executed on the OMIP trading platform, always acting as counterparty to OMIClear in all the registered operations.

Clearing Member Categories:

- Direct Clearing Member (DCM): responsible for the management and settlement of positions registered resulting from operations executed for its house account or on behalf of entities that are under its control or within the same group;
- General Clearing Member (GCM): responsible for the management and settlement of positions registered resulting from operations executed for both its own account and on behalf of third parties with which it has signed, for this purpose, a Clearing Agreement.

The general requirements to become a Clearing Member are:

- To participate on the Settlement Systems used by OMIClear, namely TARGET, or sign a Financial Settlement Agreement with a Financial Settlement Agent who is a participant on such systems;
- To make out a contribution to the Clearing Fund managed by OMIClear;
- To hold the adequate human, technical and operational resources to carry out the respective functions;

Specific requirements to become a General Clearing Member:

- To be a bank or financial intermediary;
- To own an equity capital to the minimum value of 20 million euros;
- To comply with the Rating requirements, namely to have a rating equal or greater than A/A2.

Specific requirements to become a Direct Clearing Member:

- To be a:
 - Bank or financial intermediary; or
 - Entity from the Electricity Sector; or
 - An entity, which only clears the positions of Electricity Sector Entities that are under its control or within the same group, under the terms of article 21 of the Portuguese Securities Code.
- To own an equity capital equal to or greater than 8 million euros;
- To comply with the Rating requirements, namely to have a rating equal or greater than BBB/Baa2, or give additional guarantees;



- To be an OMIP Trading Member, or have a relationship with an OMIP Trading member that is under its control or within the same group, that can act for its own account.

iii) Settlement Agents. These participants are not exactly market members, although they are recognised by OMIClear and by OMIP to provide settlement services to the market members.

There are two types of Settlement Agents:

- Financial Settlement Agent: an agent that acts as an intermediary between the Payments System (TARGET and the OMIClear account at the Banco de Portugal - the Portuguese Central Bank) and the Clearing Member with which it has signed a Financial Settlement Agreement, in order to ensure the financial settlement of the positions for which the Clearing Member is responsible. All financial entities connected to TARGET can perform the role of Financial Settlement Agent.
- Physical Settlement Agent: OMEL members that can trade and settle on the cash market. The role of Physical Settlement Agent consists in being an intermediary between the trading account holders and the Physical Settlement System, ensuring that any trading account holder can physically settle its positions

c) Transparency

All the buy and sell offers are public to participants. Consequently, they may exploit eventual disparities resulting from the gap between the supply and demand of each product. Besides this, it is possible to carry out leverage between different contracts without discriminating between agents, creating conditions for determining fair prices.

d) Clearing and Settlement

i) Types of Members

There are two types of clearing members foreseen: Direct Clearing Members and General Clearing Members (see membership regulation above). OMIClear also has relationships with Settlement Agents.

The Trading members do not relate directly to OMIClear to clear their operations. They can only do this through Clearing Members.

ii) Settlement

OMIClear promotes the settlement of daily mark-to-market during the trading period, based on the daily trading settlement prices calculated for each listed contract.

During the delivery period, the settlement of open positions is based on two different prices:

- A fixed price - the trading settlement price of the futures contract on the last trading day;
- A variable price - the spot reference price (defined daily).

The daily difference between these two prices constitutes the basis for the daily financial settlement during the delivery period.

The positions on the Financial MIBEL Futures are subject to a purely financial settlement during the delivery period, where only the financial settlement of the price differences mentioned above occurs. No energy is delivered.

In the case of a participant choosing Physical MIBEL Futures, the positions are registered in a physical trading account. During the delivery period the respective net position, considering the positions held in different contracts, is sent to the OMEL cash market at accepting price, in line with that market's rules.

iii) Central Counterparty

Through novation, all operations carried out on OMIP and registered at OMIClear, are guaranteed by this entity as Clearing House of the market. Thus, OMIClear ensures the

multilateral clearing of positions, significantly reducing the various risks that affect the operations, such as credit, settlement, systemic and operational risk. The role of OMIClear as Central Counterparty also fulfils a structural role, as it allows the coexistence of market agents of different sizes, risk exposure, trading areas without discriminating geographically.

Question 6:

According to the Trading Rulebook¹⁰:

Information to Market Participants:

- OMIP makes available to participants, on an equal basis, the information it deems necessary for the normal course of trading and for the execution of transactions in the trading platform, namely the information concerning the transactions executed by trading members;
- For each contract traded on the market, OMIP makes available to trading members, on a real time basis and through the Trading Platform, daily information on price and quantity of orders, price, quantity and the time regarding the most recent executed transaction

Information to the public, through the Market Bulletin (daily) or on the website:

- List of available contracts, being possible to limit that dissemination to those ones with open positions;
- The Contractual General Clauses and the Contract Specifications;
- The relevant prices on the market, namely the daily minimum and maximum prices of the executed transactions, as well as the settlement price for each contract;
- The quantity of the contracts traded in each session;
- The applicable fees;
- The relevant regulations;
- Any other information considered relevant to the market

Spain

Question 1:

In order to provided the required information the answer has been divided using the categorisation given in section 6.1 of Commission call for evidence. Derivatives markets considered are referred to those contract based. There have been not considered titular derivatives (such as warrants).

Agricultural (grains and livestock, foodstuffs, textiles, forest products)

To our knowledge, there is no commodity (agricultural) market with a sufficient degree of regulation concerning trade rules, membership, intermediation issues, public supervision bodies, etc to reach a consideration of regulated market in a parallel way as financial markets are.

The legislation that is applies to these commodities markets comes from common mercantile codes, which also applies to the rest of the typical economic activities. Public administration action is usually directed to promote the sector development in different ways and to implement the government policy in agricultural matters.

Because some of the activities are subjected to monetary subsidies and other economic aid, autonomous authorities have been set up which are in charge of the supervision of their correct application.

¹⁰ Articles 63 and 64.

There also exist mutual associations and similar entities that have developed systems directed to the diffusion of common trade statistics (volume, price) and the promotion of sector activities. They are not usually subjected to strong public administration rules or supervision.

The intermediation in these markets have no specific administrative requirements apart from those that appear in mercantile code and, occasionally, quite technical attribution legislation (health related and similar situations). This observation can also be done concerning centralized pools organized by professional groups with the purpose of facilitate the trade exchange.

In relation to financial derivative markets on agricultural assets, they are subjected to financial regulation in issues concerning their authorization and their supervision. At this moment, there is only one derivative market of this kind that is working in Spain.

There are no major differences between financial underlying derivative markets regulation and agricultural ones. MIFID implantation would be carried out in a similar manner. By the way, some adaptations have been developed in the past for the commodity derivatives case. The most characteristic ones were:

- Authorisation: A report must be elaborated by the Ministry on the potential effects of the markets activities on both UE and national agricultural policy objectives. The report should also contain reference to the adaptation of the market model to these objectives.

A report must be elaborated by the competent public administration on the level and the quality of the information about the underlying asset trade activity that is publicly available for all potential investors.

A report also must be elaborated about the characterisation of the underlying in the contract specifications.

- Rulebook and contract terms: The derivative market must provide systems for publishing information about the underlying market negotiations.

It also must have mechanisms to ensure that the underlying asset operations are correctly physically settled at expiration.

There must be controls to the open interest relative to the quantities traded in the underlying markets. The market operator must have the ability to adopt special measure for extraordinary market conditions.

- Suspension of the market activities: Additionally to the CNMV and market operator itself, it is possible that other organizations with competence in the underlying trade activity could promote the suspension of market negotiation. Reasons for this can be found in the explanation given above about the objectives philosophy of underlying public administration action and the possibility that the derivative market activities could have harmful effects.
- Depending on the potential risk estimated, the quantity of the minimal own clearing house resources can be reduced.
- It is permitted that companies involved in underlying asset commercial activities can acquire the membership condition. These societies have no so strict requirements as financial members but are only permitted to operate for their own accounts.

Metals (Precious metals, base metals)

There are no derivatives markets working in a regulated manner in Spain, so attending to the questionnaire instructions no description is provided about commodity trade activities.



Energy (Oil, Gas, Electricity, Coal)

There is one commodity market based in electricity energy, OMEL/OMIE, which must fulfil a rigorous set of rules in a similar way as financial markets do. This market is based on diverse derivative trading activities. Some of these activities are located in Portugal and not in Spain. The Spanish and Portuguese governments reached an agreement to create a single electricity market in the Iberian Peninsula, which is called MIBEL.

Under the terms of that agreement, despite its cross-border activity, MIBEL regulated derivatives market (called OMIP), is a market directly subject to Portuguese law and jurisdiction. On the other hand, cash commodity market is situated in Spain in such a way that products listed in Portugal have an underlying traded in Spain. OTC and non-financial considered derivatives trading activities can be done and stay under the regulation of either Spain or Portugal.

As a result of the above legal framework, the regulated derivatives market is under supervision of Portuguese CMVM. Electricity cash market is under supervision of Spanish CNE. However, taking into account the underlying nature and cross border agreement, a sector and financial authorities committee was created to monitor the evolution of the entire market. This committee is composed by CMVM, ERSE (Portuguese authorities for derivatives and cash energy markets), CNMV and CNE (Spanish authorities for derivatives and cash energy markets),

Concerning Spanish cash market, the goal of its regulation and supervision is to ensure the existence of effective competition in Spain's energy system and their objective and transparent functioning for the benefit of all agents operating in those systems and that of consumers. The CNE, the cash market authority, is attached to the Ministry of Industry which is responsible of the development of energetic general policies. The potential misuse of the market or the abuse of dominion position and the market manipulation is determined by another autonomous body, Competence Defence Court.

OTC and non-financial derivatives can also be traded. OTC contracts are primary traded through the intermediation of financial brokers. Contracts (mainly forwards or options) usually have a high degree of standardization. There is no a strong degree of supervision over this trading activities (neither CNMV nor CNE). Only prudential supervision of the financial firms performing these activities is effectuated. Non-financial electricity power derivatives consist essentially in contracts that have to be traded in a primary market to comply with the sector normative. No organized secondary market is perceived at this moment.

It is mandatory for certain major producers to sell a percentage of their energy to the rest of the market participants. This is done through the emission of call options with quasi financial characteristics and the interposition of a central counter party (MEFF). It is also mandatory for some certain high sized distributors to buy a percentage of their electricity in OMIP and through bilateral contract. These bilateral contracts have similarities with physical forwards. Both activities are under the supervision of sector power authority.

Exotic derivatives

Currently, there is no organized system giving trading services as operator in this kind of commodities or derivatives segments. By the way, we think that is important to comment the existence or the future existence of assets that could be included in this category.

The first one is the CO₂ allowance that can be trade through SENDECO. SENDECO was the Spanish exchange for the CO₂ allowance. In the past, it reached to an agreement with other European exchanges in such a way that at this time, SENDECO is some kind of represent or hub for this European exchange (climex alliance, trading and settlement infrastructures are located in the Netherlands and UK), where is situated the central order book. Under financial rules, this kind of figure is not clearly contemplated so it is not subjected to financial authority supervision.



Concerning CO2 allowance, it has also to be commented that the central registry of the Spanish assignation of CO2 allowance is carried out by IBERCLEAR, which is the official securities CSD. As this activity is not considered under financial normative, no action, beyond normal prudential supervision of the CSDs by the CNMV, is exercised. General supervision of CO2 allowance trading activity is effectuated by energetic regulator in order to evaluate its effect in the price of the energy and similar activities.

The second one is the allowance for the use of interconnectivity electric channel between Spain and Portugal, which is planned to be working during this year. Clearing and settlement services will be provided by OMICLEAR which is located in Portugal under Portuguese jurisdiction (OMICLEAR is also OMIP's clearing house). No secondary trading platform would be launched at this moment, so that before the assignation on a restricted auction, secondary market should be developed through specialized intermediaries. We feel that most of these intermediaries would be financial intermediaries. Sector energetic authorities (Spanish and Portuguese) are responsible to perform the supervision on these activities.

Question 2:

This question is answered only referring to the regulated markets.

Agricultural:

Derivative markets: MFAO (Derivative Market on Olive Oil). Product listed: Futures on Olive Oil. Cash markets: Trading is not organized.

Metal:

No organized markets.

Energy:

Derivative market: OMIP (Derivative Market on Electricity; It is located in Portugal). Product listed: Futures on Electricity. Cash markets: OMEL/OMIE (electricity exchange; it is located in Spain).

Exotic product:

No organized markets.

Question 3:

Agricultural:

Derivative markets: MFAO is under financial authority supervision exercised by CNMV. This is not going to change before MIFID implementation.

Metal:

No organized markets.

Energy:

Derivative market: OMIP is under CMVM (Portuguese securities market authority) first instance supervision and submitted to the coordination of a committee, MIBEL Regulator Council, which is formed by ERSE (Portuguese energetic sector authority), CMVM, CNE (Spanish energetic sector authority) and CNMV (Spanish securities markets authority). OMEL is under CNE first instance supervision and submitted to the coordination of the same committee mentioned above.

Exotic product:

No organized markets.

Question 4:

Agricultural:

Derivative markets: MFAO.

- Trading methods: MFAO has an electronic based trading platform with a centralized order book which is directed by orders (priorities: price, time). It is also possible the registration of bilateral trades realized directly by the participants.
- Membership regulation: It is permitted to reach the membership condition to UE ESIs and credit entities and to companies involved in the olive sector commerce (they can only be trading members and not clearing members).
- Levels of trading transparency: The market has to comply with common standard transparency levels of the rest of financial markets. By the way, it has also to provide information about the underlying trade activity. This is done through an agreement with a sector association which publishes the prices and volumes of the transactions effectuated in cash market. These statistics are constructed with the contribution of the members of this pooled association.
- Capital requirements: Minimum capital requirements of MFAO are 6 millions euros. Common financial derivatives markets capital requirements are situated in 9 millions euros.
- Clearing and settlement agreements: MFAO is responsible of the clearing and settlement. This done running a clearing house.

Metal:

No organized markets.

Energy:

Electricity derivative market: OMIP is located in Portugal and must comply with Portuguese standards and securities markets legislation.

Electricity cash market: OMEL/OMIE is located in Spain and must comply with Spanish standards and sector market legislation.

- Trading methods: OMEL/OMIE has an electronic web based trading platform with a centralized order book which is directed by orders. Priorities have to be established in a complex way to ensure the viability of the physical settlement. The trades are the result of an auction process. These auctions occur in daily and intra-daily basis. Price is marked by the highest offer price demanded. It is also possible the registration of bilateral trades realized directly by the participants.
- Membership regulation: Market participants are undertakings that are authorised to act directly in the electric power market as buyers and sellers of electricity. To exercise the right to buy and sell power in the market, participants must, in addition to complying with the requirement to record their data in the administrative registers, have confirmed their adherence to production market activity rules by signing the corresponding contract. The following entities can be market participants:
 - o Electric power producers, self-producers and producers of electricity power under special regime, electric power distributors, resellers, qualified consumer.
 - o External agents can participate in the organised market, or sign bilateral contracts with producers or domestic qualified consumers.

- Levels of trading transparency: The market complies with essentially similar transparency levels as a financial market would have. This transparency affects in the previous period before the trade and in the ulterior period after the trade and affect to price and volumes. By the way, there are some peculiarities with relation financial markets.
 - o The trading system is based on discrete interval auctions. So only in the neighbourhood of the time of the auction the bid/ask spread could be completely aligned with the final price.
 - o After the trade, the physical operator must determine the viability of the physical settlement, so it is after some time before the auction were the trades and volumes are confirmed and published.
 - o Three months after the trading day, the quantities and the participants (beneficial owners) in the trades are published by the market operator.
- Capital requirements: At this time, OMEL/OMIE is financed with charged to the electric power tariff. No explicit capital requirements are required.
- Clearing and settlement agreements: Clearing and settlement is carried out by the own market operator. By the way, the risk management only have to be performed over the buyer positions. No risk is supposed to the seller position. The seller position risk management is administrated by the physical operator. The physical operator has delegated the clearing and settlements activities in a financial clearing house (MEFF, the clearing house of the Spanish financial derivative market)

Concerning the cash market clearing happens on a real time base and settlement on a weekly base.

Question 6:

Concerning commodities and derivatives commodities information sources beyond the one that is provided by the own market operator generated major sources would be (referring only to the regulated markets):

Agricultural:

Derivative markets: MFAO (Derivative Market on Olive Oil). The main source is the own market. The derivative market serves to the function of giving a reference to the rest of olive oil commerce activities. No significant present of commercial data vendors. With reference to cash non organize market, information (prize, volumes) is provided by a pool association with congregate most notorious olive sector agents.

Metal:

No organized markets.

Energy:

Derivative and cash markets: OMIP, OMEL/OMIE. The information sources would be the market itself, the regulatory authority CNE, commercial data vendors providers (Reuters, Bloomberg, etc) and specialized brokers or specialized data providers (CIMD/ENERVIA, ICAP, Platts, etc). It is an imposition from Spanish laws that after three months of the trading day it must be published the final owner information of the transactions.

Exotic product:

No organized markets.

Sweden

Question 1:

- Any firm providing investment services which involves commodity derivatives need a license as an investment firm. The reason for that is that commodity derivatives are considered to be financial instruments.
- Most of the normal regulations for investment firms apply and Finansinspektionen is the competent authority
- The most common derivatives traded are electricity derivatives that are traded at Nordpool, a Norwegian Exchange.
- In the Swedish law proposal the exemptions under article 2(1) (i)(k) have been implemented.
- There are some cash-settled covered warrants traded at the two Exchanges in Sweden with commodities as underlying. In short the same trading and transparency rules as for shares apply and that will remain unchanged after MiFID.

Question 2:

There are currently no organized trading venues in Sweden

Question 3:

Not applicable.

Question 4:

Not applicable

Question 6:

Not applicable

UK

Question 1:

The financial services regulatory framework in the United Kingdom is established by the Financial Services and Markets Act (FSMA). A key provision of FSMA is the general prohibition against any person carrying on a regulated activity in the UK unless they are either authorised or exempt.¹¹

Regulated activities are defined in FSMA and secondary legislation (the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (SI 2001/544) (the 'RAO')).¹² Pure trading in physical commodities is not generally a regulated activity, and is therefore not regulated by the FSA¹³. The FSA is not responsible for ensuring security of supply or for protecting commodity consumers from price fluctuations. In some areas (e.g. energy) this role is performed by other regulators, e.g. OFGEM- see below.

Trading in certain commodities derivative instruments however, does constitute a regulated activity, and the market structure is similar to that of other financial markets in the UK.

¹¹ S.19 FSMA.

¹² See s.22 and Schedule 2 of FSMA and the RAO.

¹³ Physically settled options on palladium, platinum, gold or silver *are* inside the scope of UK regulation (under Article 83 of the RAO)

The regulatory regime in relation to this activity can be broadly described according to three categories; Exchanges, MTFs, and Firms.

Exchanges

Exchanges are Recognised Bodies (RBs) under FSMA. They seek recognition as Recognised Investment Exchanges (RIE), and are exempt from the requirement to seek authorisation providing they remain within the boundary of their exemption.¹⁴ As a result the parts of the FSA Handbook, including the conduct of business rules, which apply to authorized firms, do not apply to RBs.

To qualify for recognition as an RB, exchanges must satisfy the relevant provisions of the Recognition Requirements set out in the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchange and Clearing House) Regulations 2001¹⁵. Guidance in respect of the Recognition Requirements is set out in the FSA's Recognised Investment Exchanges and Recognised Clearing Houses Sourcebook ('REC')¹⁶, as are the notification rules for RBs (requiring RBs to notify FSA of events and information FSA reasonably requires for the exercise of its functions under FSMA). The Recognition Requirements will, from 1 November 2007, contain the MiFID provisions relating to Regulated Markets.

All RIEs (whether trading commodities, equities etc) have a continuing obligation to satisfy the Recognition Requirements and are subject to the provisions of REC as well as provisions in FSMA that are directly applicable. It is for each RIE to be able to demonstrate that they comply with the Recognition Requirements. This approach facilitates competition by permitting a range of compliant approaches. FSA takes a 'close-and-continuous' approach to the supervision of RIEs including having regard to their structure, trading activity and monitoring, using periodic risk assessments.

The Recognition Requirements include provisions relating to:

- maintaining sufficient financial resources for the proper performance of its role;
- suitability to perform the relevant functions of an RIE
- systems and controls;
- general safeguards for investors;
- clearing and settlement;
- addressing financial crime and market abuse;
- ensuring access to the market protects its orderly functioning;
- complaints handling and disciplinary action.

See Chapter 2 of REC for full details of the Recognition Requirements

¹⁴ S.285(2) FSMA.

¹⁵ Statutory Instrument 2001 No. 995

¹⁶ <http://fsahandbook.info/FSA/html/handbook/REC>



MTFs

At the moment authorised firms may operate alternative trading systems (ATs) which resemble exchanges in some respects. From April 2004, such firms have had to comply with additional specific requirements reflecting the CESR standards for ATs. These requirements have been written into each firm's permission, rather than being contained in rules, though an illustrative list of requirements is contained in Chapter 5 of the Market Conduct sourcebook (MAR).

From 1 November 2007, when MiFID comes into full effect, operating a multilateral trading facility (MTF) on which MiFID instruments are traded will become a separate 'regulated activity' in the UK. So a person operating an MTF in MiFID instruments involving commodities will need to be either authorised or exempt. If authorised, Chapter 5 of the Market Conduct sourcebook (MAR) will be amended to include rules copied out from MiFID to apply to such operators. RIEs may also operate MTFs and the corresponding MiFID requirements will be found in the Recognition Requirements and REC. We are not aware of an MTF operator seeking to rely on the MiFID exemption in article 2 (1)(i). This may be because the firm does not consider that operating an MTF is an 'investment service' or because operating the MTF is not an ancillary activity to the firm's main business.

A firm or RIE operating an MTF must have:

- Transparent and non-discretionary rules and procedures for fair and orderly trading;
 - Effective arrangements and procedures for the monitoring of their rules, and for identifying and reporting conduct that may involve market abuse;
 - Objective criteria for the efficient execution of orders;
 - Transparent criteria for determining the financial instruments that can be traded under its systems;
 - Transparent rules, based on objective criteria, to ensure that members are suitable.
-
- Publication of pre-trade information requirements do not extend to the commodity markets, but if the same or substantially similar instruments are also traded on a UK RIE, a regulated market or an EEA commodities market, the FSA generally expects that in order to fulfil the requirements on an MTF operator in relation to transparent and non-discretionary rules and procedures for fair and orderly trading the operator of the MTF will make public, on reasonable commercial terms and as close to real time as possible, the price, volume, and time of transactions executed under its systems.

Firms

The FSA regulates 'over the counter' (OTC) transactions in investments by authorised firms. Firms trading commodity derivatives are subject to FSA requirements regarding Conduct of Business, in relation to investment business customers, where relevant, and the Prudential Standards contained in BIPRU. These include requirements relating to credit risk, operational and market risk, as well as capital requirements for settlement and counterparty risk.

Individual investor participation in the commodity and exotic derivative markets is limited. As the vast majority of clients are 'professional' firms (commercial or institutional investors), they are treated as sophisticated investors not requiring the full range of conduct of business protections. Similarly prudential supervision is set with appropriate regard to the fact that the 'systemic' risk posed by specialist commodity derivative firms tends to be lower than risks posed by banks and investment firms providing services in a wider spectrum of products.

As an extension of this, two types of participant are entitled to an exemption from certain rules based on their specific involvement in a professional capacity:

Oil Market Participants (OMPs) do not need to apply capital rules as long as they are not members of a recognised or designated investment exchange entitled to trade with other members.

In summary, an OMP is a firm which:

- (a) only engages in regulated activity in relation to an oil investment or to oil which:
 - (i) is the executing of own account transactions on any recognised investment exchange or designated investment exchange ; or
 - (ii) if it is not the executing of transactions on such exchanges, is performed in connection with or for persons who are not individuals;
- (b) is only establishing, operating or winding up a collective investment scheme which is an oil collective investment scheme in which individuals do not participate.

Energy Market Participants (EMPs) whose main business consists of the generation, production, storage, distribution and/or transmission of energy can apply to the FSA to disapply prudential requirements. Energy is defined as coal, electricity, natural gas (or any by-product or form of any of them) or oil.

In summary¹⁷, an EMP is a firm which:

- (a) only engages in regulated activity in relation to an energy investment or to energy which:
 - (i) is the executing of own account transactions on any recognised investment exchange or designated investment exchange; or
 - (ii) if it is not the executing of transactions on such exchanges, is performed in connection with or for persons who are not private customers;
- (b) is only establishing, operating or winding up a collective investment scheme which is an energy collective investment scheme in which private customers do not participate.

Commodity trading firms which are members of a group may be subject to consolidated supervision. A group which contains commodity firms which are MiFID exempt firms may also be subject to non-directive consolidation per the FSA's own rules

Rationale

This general approach to regulation must be viewed in the context of our statutory objectives. Established in FSMA, they require the FSA to: maintain confidence in the UK financial system; promote public understanding of the financial system; secure the appropriate degree of protection for consumers; and help to reduce financial crime.

Other competent authorities

The FSA is not a price regulator. There are no specific provisions relating to fees for transactions. However, RBs must notify the FSA of any proposal to change its fees or charges, including details of any proposed incentive schemes. When reviewing such notifications, particularly in relation to incentives schemes, the FSA has regard to their potential impact on the 'orderly markets' Recognition Requirement (e.g. encouraging trading other than for a proper purpose, and/or distortion of the price formation process). We do not manage volatility in the market.

Ofgem is the regulator for Britain's physical gas and electricity industries. Its first priority is to **protect consumers** which it does by:

- promoting effective competition, wherever appropriate, and
- regulating effectively the monopoly companies which run the gas pipes and the electricity wires

Its other priorities are to:

- help secure Britain's energy supplies by promoting competitive gas and electricity markets - and regulating so that there is adequate investment in the networks.
- help gas and electricity markets and industry achieve environmental improvements as efficiently as possible

¹⁷ For the full and complete definition of an OMP or EMP see FSA Handbook at <http://fsahandbook.info/FSA/html/handbook/>



The Gas Act 1986 and Electricity Act 1989 make it an offence to engage in certain activities relating to gas and electricity without a licence. The Secretary of State and Ofgem issue licences. Licences contain various conditions. Some conditions relate to the participation in the wholesale energy market. Ofgem ensures compliance with licence conditions and has enforcement powers given to it under the relevant acts.

Ofgem's regulatory powers encompass some but not all aspects of the trading environment. In particular, some conditions in generation, supply and shipper licences relate directly to behaviour in the wholesale markets. Ofgem additionally has concurrent powers with the Office of Fair Trading under the Competition Act 1998 which are intended to address anti-competitive behaviour. More information can be found at <http://www.ofgem.gov.uk>

Question 2 and 3:



Regulatory Status	Venue	Products Traded
Recognised Investment Exchange (RIE)	ICE Futures Ltd	Commodity derivative contracts (oil, natural gas, power and emissions)
	London Metal Exchange	Commodity derivative contracts (non-ferrous metals, plastics)
Alternative Trading Systems (ATS)/ Multilateral Trading Facilities (MTF)	LIFFE Administration and Management	Predominantly financial and equity derivatives, but also commodity (coffee, cocoa sugar and wheat) derivatives
	APX Power Limited	Power and gas
	BGC International	Commodity derivatives (base metals)
	CantorCO2e Limited	Co2 emissions trading
	Creditex Brokerage LLP	Credit derivatives
	GFI Brokers Limited	Financial, energy and commodity derivatives (including freight, weather, and emissions)
	Global Coal Limited	Coal trading
	Icap Energy Limited	OTC services in energy markets
	Spectron Energy Services Limited	Intermediary broker in energy and commodity markets (including natural gas, electricity, oil, coal, metals, weather and emissions)
	Swapstream Operating Services Limited	Interest rate swaps
Recognised Overseas Investment Exchange (ROIE)	Tradition Financial Services Limited	Equity and commodity derivatives (including freight, precious metals, energy, property derivatives and pulp & paper markets)
	Tullett Prebon (UK) Limited	Energy derivatives
	Board of Trade of the City of New York, Inc [NYBOT Inc]	Commodity futures
	Chicago Board of Trade [CBOT]	Commodity futures
	New York Mercantile Exchange Inc. [NYMEX Inc.]	Commodity derivatives (inc oil, gas, energy, metals)
	RMX Risk Management Exchange AG	Agricultural derivatives
	Sydney Futures Exchange Limited	Wool/Cattle futures
The Chicago Mercantile Exchange [CME]	Wide range of derivatives	

Question 4:

As demonstrated in the last two questions, there is a wide range of trading venue in the United Kingdom. It is therefore difficult to summarise their design, where the participants themselves are able to exercise choice. Here we outline the approach of the 3 RIEs, and summarise the general approach of MTFs.

Trading methods



LIFFE is the London based futures and options exchange providing a range of contracts covering Financial (mostly Short Term Interest Rate products – "STIRS" including Euribor, Short Sterling and EuroSwiss), Equity (stock and index futures and options) and Commodity (coffee, cocoa, sugar, wheat) derivatives. LIFFE CONNECT is the electronic trading system developed and used by LIFFE for all of their futures and options trading. While the main trading takes place via the central order book there is also a block facility and an OTC facility – more detail can be found on the website <http://www.euronext.com/derivatives>.

LME (London Metal Exchange) offers trading in deliverable contracts in base metals (copper, aluminium, zinc, tin, lead, nickel, aluminium alloy and a North American spec aluminium alloy) as well as two types of plastics. Trading is either by the electronic platform (Select), via the open outcry ring or on the telephone market. Different levels of transparency pertain but in aggregate the exchange meets the recognition requirement.

ICE Futures is Europe's leading energy derivatives exchange. Its principal markets are in oil and oil products futures transactions with the Brent, WTI and Gasoil Futures contracts being its leading products. It also offers a range of so called "utility" futures contracts including UK Natural Gas, UK electricity and EU ETS emissions futures. The contracts are a mix of physical (e.g. Emissions and Gasoil) and cash settled delivery (e.g. Brent and WTI). ICE Futures also offers Options markets although these are all low liquidity.

ICE Futures contracts are traded on the electronic "ICE platform" which is provided by its US parent company, Intercontinental Exchange Inc. Over 90% of all contracts are traded on the central order book, i.e. on the ICE platform. To service market needs the remainder of trading takes place through a combination of block trades, exchange of futures for physical/ swaps (EFP/ EFSs), which are all prearranged. In general, the less liquid utility contracts have higher proportions of prearranged trades.

MTFs can take a broad range of trading approaches; matching trades at mid-price, and using a reference price from an established exchange among the most common.

Membership Regulation

Participants of exchanges trade either as members of their trading venue, or through members. Membership criteria are at the discretion of the venue, but if members are to be admitted that are not *authorised persons* (authorised by the FSA), then exchanges must notify the FSA when a new type of member/member from a new jurisdiction is admitted, explaining how it is still able to meet the recognition requirements and REC as a whole.

In practice, all members of the London Metal Exchange are FSA authorised, but ICE Futures Ltd includes 'local traders' (independent proprietary traders) and hedgers (oil producers and consumers). They develop, publish and enforce their own rules to which members are bound in contract law. For details see <https://www.theice.com/membership.jhtml>.

LIFFE's membership regulation requires members to abide by exchange rules and members are audited by the exchange to ensure compliance – the full details of which are available here <http://www.euronext.com/fic/000/019/401/194016.pdf>.

Likewise, MTFs are free to set their own membership criteria, subject to the MAR 5 criteria discussed in Question One.

Levels of trading transparency

The RIEs are fully electronic, and afford all participants a highly transparent view of price formation and overall levels of transparency.

MTFs have different market structures which offer differing amounts of information; crossing networks for example, only provide the user with information if there is the opportunity for a matched trade to occur.

Capital Requirements

The capital requirements for commodity derivative exchanges are set out in REC 2.3. They require that the RIE have sufficient financial resources for the proper performance of its functions. In considering this, the FSA may have regard to a number of factors, including the risks to which the body is exposed.

From the introduction of MiFID, operating an MTF will be deemed a specific investment activity. MTFs will be subject to the requirements of the Capital Requirements Directive, facing a minimum requirement of €730k. In practice most already face a similar requirement.

Clearing and Settlement arrangements

Clearing and settlement arrangements are largely a commercial decision for UK trading venues, subject to the REC provision for RIEs that they have satisfactory arrangements and MiFID derived requirements on MTFs. Operators of MTFs will need to ensure that they have put in place the necessary arrangements to facilitate the efficient settlement of the transactions concluded under systems of an MTF. Investment firms must take reasonable steps to ensure the continuity and regularity in the performance of investment services and activities. Investment firms may not be prevented from entering into 'appropriate' arrangements with a central counterparty, clearing house or settlement system of another Member State.

LIFFE, LME and ICE all currently clear and settle through the London Clearing House. MTFs may decide to use a central counterparty depending on their business model.

Question 6:

The main information source available to market participants that the FSA has a direct bearing on is the transparency requirements to ensure efficient price formation on multilateral venues like exchanges or MTFs. The Recognition Requirements require that RIEs can only admit to trading instruments in which there is a proper market, and where appropriate arrangements are made for information relevant in determining the current values of the instrument to be made available.

Beyond this, it is up to market participants to decide on what basis they trade. Trading data can be obtained from the exchanges themselves, and from specific vendors like Reuters and Bloomberg. A wide range of information sources relating to the market, and to the underlying will be relevant; from macroeconomic data (e.g. the effect of Chinese growth rates on the demand for copper) to information on oil pipeline outages, weather, the discovery of oil fields etc. As stated previously, these markets are for wholesale professionals, and it is the combination of these factors (and many more) that will inform a participant's trading decisions.



PART II

With regard to commodity markets and rules that prohibit the use of inside information or market abuse, CESR was invited to address the following questions, listed in point 5 of the Request for initial assistance by the European Commission, dated 13 March 2007:

- 1) Please describe to what extent commodity markets are subject to rules that prohibit the use of inside information or market manipulation in your jurisdiction.
- 2) To what extent do these rules differ, if at all, from those currently imposed by the MAD?
- 3) Please specify, where possible, whether there have been any cases of insider dealing or market manipulation in those markets.

28 answers have been received from the CESR-membership which are listed in this compilation.

Executive Summary and emerging themes:

1. From the answers provided to the questions put to the CESR members it is possible to identify general themes and make some inferences about the explanation for these themes.
 - Around half of CESR members have no commodity derivatives markets operating within their jurisdictions. For some of these jurisdictions the provisions of the Market Abuse Directive have been implemented so that they would apply equally to any commodity derivatives markets that started to operate within that jurisdiction.
 - For those jurisdictions that do have commodity derivatives markets most have applied the MAD provisions without any amendments, whereas others have made specific provisions for commodity derivatives markets.
 - It is notable that there have been very few cases involving sanctions for market abuse in relation to the commodity derivatives markets. No cases involve insider dealing. There have however been a very few cases involving behaviour in the markets – abuse of dominant positions or trading near the market close.
2. There are several potential explanations for this relatively low level of supervisory cases relating to the commodity derivatives markets. Whilst the concept of insider dealing is relevant to the commodity derivatives markets, it is different in nature for these markets as compared to the equity or debt markets. There are many large market participants that are also significant producers, which is something that the other market participants take into account in relation to their market trading.

When considering this aspect, it is also relevant to bear in mind that the commodity derivatives markets are generally markets involving sophisticated investors. There is almost no retail investor involvement in these markets. This may give rise to two effects. As compared to the equity and debt markets, the number of market participants in the commodity derivatives markets is relatively low. This could have the effect of creating a greater degree of market "discipline" as questionable activity by a participant is more likely to be identified by other market participants who will change their behaviour accordingly. If one market participant takes unreasonable advantage of other market participants they will remember and may be less accommodating next time. Given the lower number of market participants there is a much greater chance of being shut out of the market. It is probably also the case that since the commodity derivatives markets involve almost exclusively wholesale market participants there is

less close and continuous scrutiny by regulators in relation to market abuse than would be the case for other markets.

Compilation of answers provided by the members of CESR-Pol

Respondent	Please describe to what extent commodity markets are subject to rules that prohibit the use of inside information or market manipulation in your jurisdiction.	To what extent do these rules differ, if at all, from those currently imposed by the MAD?	Please specify, where possible, whether there have been any cases of insider dealing or market manipulation in those markets.
Finanzmarktaufsicht (Austria)	<p>According to Austrian law it has to be distinguished in this respect between a) Commodity Markets and b) Markets for Commodity Derivatives:</p> <p>a) Commodity Markets are not subject to explicit rules prohibiting insider dealing or market manipulation. Nevertheless, an operator of a Commodity Market must establish rules that ensure fair trading. According to Sec. 26 ASEA (Austrian Stock Exchange Act) the trading on such markets has to inter alia conform to the following principles: "Trading on the exchange shall take place in accordance with the rules of fairness and with the principle of equal treatment of all market participants. Above all, no simulated transactions or transactions for the purpose of damaging third parties may be concluded. The exchange operating company shall issue regulations necessary for the protection of investors and for the maintenance of the good reputation of exchanges in Austria that provide for the equal treatment of the market participants." Commodity Markets are supervised by the Federal Ministry of Economics.</p>	<p>According to Austrian law it has to be distinguished in this respect between a) Commodity Markets for Commodity Derivatives:</p> <p>a) For Commodity Markets there are no explicit prohibitions of Insider Dealing or Market Manipulation. Commodity Markets are supervised by the Federal Ministry of Economics.</p> <p>b) For Commodity Derivatives, if they are listed on a regulated market, the regular insider dealing (Sec. 48b ASEA in conjunction with Sec. 48a para 1 (1) ASEA) and market manipulation prohibitions (Sec. 48c ASEA in conjunction with Sec. 48a para 1 (2) ASEA), which have transposed the MAD requirements in this respect, are applicable. According to Sec. 48a para 1 (1) b</p>	<p>The FMA is not aware of any cases of market manipulation or insider dealing in either Commodity Markets or Markets for Commodity Derivatives.</p>

	<p>b) Commodity Derivatives are financial instruments according to Sec. 48a para 1 (3) ASEA. To the extent these financial instruments are traded on a regulated market the same prohibitions of insider dealing and market manipulations which are applicable to other financial instruments apply. The insider dealing (Sec. 48b ASEA in conjunction with Sec. 48a para 1 (1)) and market manipulation prohibitions (Sec. 48c ASEA in conjunction with Sec 48a para 1 (2) ASEA) for financial instruments have been transposed according to the requirements of the MAD.</p>	<p>ASEA Insider Dealing and Market Manipulations in Commodity Derivatives are supervised by the Federal Ministry of Economics and not the FMA.</p>	
<p>Commission bancaire et financière et des assurances (Belgium)</p>	<p>We don't have any commodity derivatives on our exchanges for the time being (there are some projects for electricity derivatives, but nothing concrete yet).</p>		
<p>Financial Supervision Commission (Bulgaria)</p>	<p>In Bulgaria commodity derivatives market is subject to regulation by the State Commission on Commodity Exchanges and Markets. It is a state body at the Council of Ministers entrusted with regulating and monitoring the setting up and functioning of commodity derivatives exchanges, commodity derivatives markets and producers' markets. The terms and the procedures for the setting up, structure and functioning of the commodity derivatives exchanges, commodity derivatives markets and the producers' markets are regulated by the Law on Commodity Exchange and Wholesale Markets. More information about commodity derivatives markets you can receive from the State Commission on Commodity Exchanges and Markets.</p>		

	Although in Bulgaria derivative contracts are not dealt, commodity derivatives are object to regulation by Law on Measures against Market Abuse with Financial Instruments (which implements MAD).		
Securities and Exchange Commission (Cyprus)	There are no Commodity markets and no derivatives are being traded in the Cyprus Stock Exchange		
Finanstilsynet (Denmark)	Commodity derivatives markets are subject to the same rules that prohibits use of insider information as currently imposed by the MAD		We have not had any market abuse cases in Denmark (on commodity derivatives markets) as we do not have any commodity derivatives markets.
Financial Supervision Authority (Estonia)	In general there is no regulated commodity derivatives market in Estonia. Therefore there are no rules applicable for such a market. In theory, there would be rules for commodities derivatives as long as they are securities and traded on the regulated market.	N/A	N/A
Rahoitustarkastus (Finland)	There are no regulated commodity derivatives exchanges in Finland. However, the market abuse law is applicable to commodity derivatives if defined as financial instruments and traded on a regulated market.	The rules for commodity derivatives do not differ from the rules imposed by the MAD.	N/A
Autorité des marchés financiers (France)	Under French regulatory framework, only commodity derivatives admitted to trading on a regulated market (or for which a request for admission on a regulated market has been made) are subject to market abuse provisions (in connection to the market abuse directive). Consequently, all commodity derivatives (on rape seed,	For regulated markets of or commodity derivatives (MATIF) : the MAD provisions are applicable (in addition to specific market rules). For MTF 's commodity	No case to report yet.

	<p>rapeseed oil, milling wheat and corn) that are admitted to trading and negotiated on MATIF, a French regulated market, are subject to market abuse laws and regulations (MAD regime).</p> <p>Commodity derivatives traded on Powernext, a French MTF, are outside the scope of the French regulations implementing MAD. Are concerned the electricity derivatives and spot contracts as well as carbon allowances that are traded on this MTF.</p> <p>Powernext however enforces market rules on all its Members. These include rules inter alia provisions relating to market integrity, fairness and proper conduct (e.g. orders should not aim at influencing prices or other members' behaviours; disseminating false or misleading information impacting prices; manoeuvres to create misleading impression to other market members).</p>	<p>derivatives, the MTFs (Powernext) rules are of contractual nature and any violation is thus a matter between Powernext and the concerned member. These contractual rules are in addition of the applicable regulations on conduct of business that authorised investment service providers should comply with in their trading activities, on all venues, including on MTFs.</p>	
<p>Bundesanstalt für Finanzdienstleistungsaufsicht (Germany)</p>	<p>Commodity derivatives markets can be organised as exchanges. In Germany there exists the European Energy Exchange, EEX (spot market in power contracts and derivative market in power derivatives contracts) and the Risk Management Exchange (RMX, agricultural commodity futures, no spot market).</p> <p>German Insider Law is applicable to commodity derivatives which are listed on a domestic exchange or a regulated market within the EU/ EEA. OTC traded commodity derivatives are covered, if their price depends directly or indirectly on the price of a financial instrument which is traded on a domestic exchange or a</p>	<p>The insider prohibitions are in line with the requirements of MAD. However, the scope in terms of market manipulation law is wider than required by MAD, as in Germany also the spot market is covered.</p>	<p>BaFin has not yet conducted any investigations related to commodity markets.</p>

	<p>regulated market. Also market manipulation law is applicable to commodity derivatives which are listed on a domestic exchange or a regulated market within the EU/ EEA.</p> <p>Commodities as such are not defined as financial instruments and therefore are not covered by the insider rules. Commodity markets as spot markets are not covered by the German insider prohibitions.</p> <p>However, commodities are covered by the market manipulation prohibitions, if they can be traded on an organised market (e.g. exchange).</p>		
Capital Market Commission (Greece)	<p>At present there are no commodity derivatives exchanges operating in Greece.</p> <p>The provisions of art. 2 para. 9b and c of Law 3340/2005, which transposed the Market Abuse Directive into the Hellenic legislation, states that commodity derivatives as well as any other financial instrument admitted to trading on a regulated market or for which request for admission to trading on such a market has been submitted, are classified for the purposes of said law as financial instruments.</p>	<p>There are no additional domestic rules, other than the ones imposed by the MAD specifically for commodity derivatives.</p>	
Hungarian Financial Supervisory Authority (Hungary)	<p>We have commodity markets, but commodities are not subject to MAD rules - as implemented in the Hungarian Capital Markets Act. The MAD regime extends only to commodity derivatives markets</p>	<p>The MAD rules relevant for commodity derivatives do not differ from those relevant for any other regulated markets.</p>	<p>Since the implementation of the new MAD regime we have not investigated cases of insider dealing or market manipulation in commodity derivatives markets.</p>
Financial Supervisory Authority (Iceland)	<p>We have no commodity derivatives markets and no special rules directed at such</p>		

	markets.		
Irish Financial Services Regulatory Authority (Ireland)	At the moment, there are currently no commodity derivatives exchanges separately established and physically operating in Ireland.	As such, at present, there are no additional prohibitions (other than those provided in the MAD and its implementing measures as transposed into Irish Law) for such exchanges in this jurisdiction.	
Commissione Nazionale per le Società e la Borsa (Italy)	<p><u>The markets</u></p> <p>SeDex is a regulated market managed by Borsa Italiana Spa where several covered warrants on silver, gold, Brent, oil, platinum and palladium are listed. Covered warrants fall within the definition of financial instruments.</p> <p>The Italian Electricity Markets (or IPEX, Italian Power Exchange) is an organised exchange managed by GME. Currently energy is traded spot. It is possible that in the near future derivatives on energy will be launched.</p>	<p><u>The rules on market abuse</u></p> <p>According to Art. 180(1) of the legislative decree no. 58/1998 derivatives on commodities are financial instruments and, therefore, are covered by the same provisions set out by the MAD for any other financial instruments.</p> <p>Consistently with the MAD, Art. 187-bis(3) of the mentioned decree provides that also derivatives on commodities which are not listed on a EU regulated market are covered by the prohibitions of abuse of inside information set out by the MAD as long as their values depend on that of financial instruments listed a EU regulated market.</p> <p>As to the Italian Electricity Markets, i.e. the spot market, according to Art. 3(3) of the Integrated Text of the Electricity Market Rules approved by Ministerial Decree of</p>	<p><u>Surveillance and Enforcement</u></p> <p>Consob has not carried out any investigation on covered warrants on commodities but several cases have been analysed during ordinary surveillance activities.</p>

		19 December 2003, <i>“In their activities in the market, Market Participants are required to behave in accordance with common principles of honesty and good faith”.</i>	
Financial and Capital Market Commission (Latvia)	We have no regulated commodity derivatives markets in Latvia and no derivatives traded on a regulated market in Latvia, however the use of the inside information or market manipulations are prohibited by the rules.	No specific rules. The rules do not differ from those currently imposed by the MAD.	As mentioned in the answer to the Question 1, we have no regulated commodity derivatives markets and no derivatives traded on the regulated market in Latvia, thereby, so far there have been no cases of insider dealing or market manipulation in those markets.
Lithuanian Securities Commission	The commodity derivatives market does not operate in Lithuania, as well as no other derivatives market does.	In case of such markets being operated the same provisions (as those implemented by MAD) would apply.	N/A
Commission de surveillance du secteur financier (Luxembourg)	Commodity derivatives markets are subject in Luxembourg to market abuse prohibitions as commodity derivatives can be classified as “any other instrument admitted to trading on a regulated market or for which a request for admission to trading on such a market has been made”. The prohibition of insider dealing and of market manipulation relate to any financial instrument as listed in article 1 paragraph 3 of the law of 9 May 2006 on market abuse (said article has literally transposed article 2 paragraph 3 of directive 2003/6/EC and adapted the wording for local purposes).	The rules on commodity derivatives do not differ from the rules imposed by MAD.	For the time being, there has been to our knowledge no insider dealing and no market manipulation on commodity derivatives.
Malta Financial Services Authority	Market Abuse is regulated in Malta by way of the	The PFMA requirements	N/A - refer to reply to (1) above.

	<p>Prevention of Financial Markets Abuse Act, 2005 (PFMA). The Act inter alia applies to financial instruments admitted to trading on a regulated market in Malta or in any other Member State or EEA State. The definition of financial instruments for this purpose extends to certain derivatives, including commodity derivatives. There is currently no commodity market operating in Malta. The Malta Stock Exchange (the only regulated market in Malta) does not provide trading facilities for commodity derivatives.</p>	<p>transpose those of the MAD.</p>	
<p>Autoriteit Financiële Markten (AFM) (Netherlands)</p>	<p>In the Netherlands we currently have two commodity markets, APX and Endex. APX is a market where solely spot-contracts are traded that do not qualify as financial instruments. DTe (the office of Energy Regulation), a division of the Netherlands Competition Authority (NMa) is the competent authority. The provisions of the Market Abuse Directive do not apply to the trading of spot contracts on APX, because of the fact that these contracts are not considered to be financial instruments (which is one of the main criteria for the applicability of the regulation on market abuse under Dutch law). However APX has a Rulebook that contains provision with respect to market abuse; i.e, members should refrain from market abuse and similar provisions. However violation of a Rulebook stipulation is a civil matter between, in this case, APX and the Member.</p> <p>As far as Endex is concerned the Market Abuse Directive does not apply since the scope of the Market Abuse Directive is restricted to securities</p>	<p>In general it is so that the provisions market abuse as laid down in the Act on the Financial Supervision are applicable to commodity derivatives if they are defined as financial instruments and traded on a regulated market (this scope is similar to the scope of the Market Abuse Directive). If these conditions are met, the rules that apply do not differ.</p>	<p>No cases of insider dealing or market abuse in these commodity markets have been reported yet to the AFM. (Remark: 85-90% of the future contracts in the Netherlands are OTC traded).</p>

	<p>traded on a regulated market and Endex is not a regulated market.</p> <p>However in the Act on the Financial Supervision (the Act with which the MAD has been implemented in the Netherlands) the applicability of the provisions of market abuse is extended to non regulated markets that are a recognised stock exchange in the Netherlands, such as Endex. Furthermore Endex also has Rulebook that contact market conduct rules.</p>		
Kredittilsynet (Norway)	<p>Commodity derivatives listed on a Norwegian Stock exchange or authorised markets are subject to rules that prohibit the use of inside information or market manipulation. At the moment Norway has four such markets. These are:</p> <p>Nordpool, financial market on power and climate derivatives and green certificates,</p> <p>IMAREX, financial market on freight derivatives and bunkers,</p> <p>Fishpool and FishEx, both financial markets on Atlantic salmon derivatives.</p>	The rules that apply on these markets do not differ from those imposed by MAD.	<p>There have been two larger cases where there has been suspicion of market manipulation on Nordpool. None of these cases resulted in sanctions. However Kredittilsynet ended up criticising an investment company for its behaviour in the market. In short, the case involved the unwinding of a hedge near up to the exchanges closing time.</p>
Polish Financial Supervision Authority	<p>According to Polish law it has to be distinguished in this respect between a) Commodity Markets and b) Markets for Commodity Derivatives:</p> <p>a) Commodity Markets are not subject to rules prohibiting insider dealing or market manipulation. However, Minister of Finance can refuse to authorise such market if the safety of trade seems to be endangered.</p> <p>b) Market for Commodity Derivatives is a type of regulated market thus all regulations concerning</p>	<p>According to Polish law it has to be distinguished in this respect between a) Commodity Markets and b) Markets for Commodity Derivatives:</p> <p>a) For Commodity Markets there are no prohibitions of Insider Dealing or Market Manipulation.</p> <p>b) For Commodity Derivatives, if they are listed on a regulated market, the</p>	<p>The PFSA is not aware of any cases of market manipulation or insider dealing in either Commodity Market or Market for Commodity Derivatives (both Markets exist in Poland however they are not regulated markets).</p>

	<p>regulated market are in force - the insider dealing and market manipulation prohibitions as well. However, in practise in Poland there is no such market (one that has an authorisation granted by Ministry of Finance has not been notified to European Commission).</p>	<p>regular insider dealing and market manipulation prohibitions, which have transposed the MAD requirements in this respect, are applicable.</p>	
<p>Comissão do Mercado de Valores Mobiliários (Portugal)</p>	<p>The commodity derivatives market, which is a segment supervised by the CMVM of the Iberian Electricity Market, started operating in July 3rd 2006.</p> <p>It is subject to the same rules that prohibit insider dealing and market manipulation on regulated markets, the difference being in the definition of inside information, which is in line with article 1 of the MAD.</p>	<p>They do not differ, since they were adopted precisely with the transposition of the MAD and the market started operating after that transposition.</p>	<p>Since the market started in July 2006 there were no cases of insider dealing or market manipulation detected.</p>
<p>Romanian National Securities Commission</p>	<p>According to the provisions of art. 28 (1) of the Law no.357/2005 regarding commodities exchanges, the organization and operation of commodities exchanges fall under the authority of the Steering Committee of the Chamber of Commerce and Industry of Romania (CCIR). The Steering Committee of the Chamber of Commerce and Industry of Romania (CCIR) has the authority to supervise, inspect and sanction the commodities exchanges, shareholders members, affiliated members and also the clients of the exchange which have the right to perform transactions on the markets administrated by a commodity market.</p> <p>By consequence, Romanian National Securities Commission, as supervisory authority for capital market, does not have attributions related to commodities markets.</p>	<p>Taking into account that the Capital Market Law (no.297/2004), through Title VII, transposes the provisions of MAD, in what concerne the derivatives on commodities, the applicable rules does not differ from those stipulated by MAD. Please see also the answer to the first question.</p>	<p>From the Romanian National Securities Commission data, on the only regulated market where could be performed in this moment transactions with derivatives on commodities, there are no transactions recorded with futures contracts or options having as asset support commodities. Under these circumstances, there were no cases of transactions based on inside information or market manipulation for derivatives on commodities.</p>

	<p>Taking into considerations that the mandate of the European Commission is related also to the issue of commodities derivatives, as regards the derivatives on commodities, these are included in the category of the financial instruments, as these are defined by the Capital Market Law - Law no.297/2004 (art.2 alin.1 pct.11 letter h:..."<i>financial instruments mean: h) derivatives on commodities</i>)".</p> <p>Under these circumstances in which, in accordance with the definition of the Law no297/2004, the derivatives on commodities are considered financial instruments, the provisions of Title VII-Market Abuse from the Capital Market Law are applicable to the derivatives on commodities, respectively Articles 244 – 257.</p>		
National Bank of Slovak Republic	<p>Commodity derivatives Markets are not subject to explicit rules prohibiting insider dealing or market manipulation. However, according to Act on Commodities Exchanges No. 229/1992 Coll. an operator of a Commodity derivatives Market must establish rules that ensure fair trading. Commodity derivatives Markets are regulated and supervised by the Ministry of Economics.</p>	<p>There are not any explicit prohibitions of Insider Dealing or Market Manipulation in Commodities Exchanges Act. Commodity derivatives Markets are supervised by the Ministry of Economics.</p>	N/A
Securities Market Agency (Slovenia)	<p>There is no organized commodity market in Slovenia at the moment as well as no organized derivative instruments trading on organized market. This is the reason there are no special MAD rules for commodity derivatives market.</p>	<p>In case there were derivative instruments trading on organized market and since securities and derivative instruments are both in accordance with Article 6a of the Securities Market Act considered financial instruments the provisions of MAD would apply to them</p>	No.

		accordingly.	
Comisión Nacional del Mercado de Valores (Spain)	At the moment, there is one regulated commodity derivatives market (MFAO) and one commodity exchange with a regulated derivative market working in another UE country, Portugal (OMEL/OMIE is the Iberian electric power exchange while OMIP is the Iberian electric power derivative market, based in Portugal).	<p>Regulated derivatives markets are subject to the prohibition of the use of inside information and market abuse, as they are regulated under securities laws and market abuse directive.</p> <p>Organized commodities exchanges are not subject to securities markets laws so the market abuse directive would not apply under Spanish legislation. However, the existing commodity exchange (OMEL) is subject to an extensive power sector normative. In its various rules and regulations there are provisions that contemplate irregular conducts by the market participants, in particular on the manipulation of the market. The reason for this is the potential market power of some participants. The sector-wide regulation focuses on these cases. The competition regulations would also be relevant for cases of market power abuse and are resolved by The Competition Defence Court.</p> <p>Beyond these sets of rules, ordinary civil and commercial law would also apply for generic market abuse treatment.</p> <p>Actual rules that</p>	Concerning the electricity utilities market there have been several cases of sanctions to market participants. These sanctions are mainly referring to market manipulation by the dominant position and to non-compliance with the sector's technical requirements. No insider cases have occurred to our knowledge.

		<p>govern the electric power exchange are issued with the aim of ensuring the existence of effective competition in the energy sector and its transparent functioning for the benefit of all agents operating in those systems and that of consumers.</p> <p>Differences between securities markets laws (such as MAD) should be found in their orientation (preservation of the competition in non-competitive markets), its specialization (quite technical aspects) and the entities involved in the resolution of the suspected cases.</p>	
Finansinspektionen (Sweden)	There are no commodity exchanges in Sweden. However, the Swedish market abuse law is applicable to commodity derivatives if they are defined as financial instruments and traded on a regulated market.	The rules for commodity derivatives do not differ from the rules imposed by the MAD.	Finansinspektionen has not conducted any investigations in commodity derivatives.
Financial Authority (United Kingdom)	<p>The UK Market Abuse Regime applies to all qualifying investments admitted to trading on prescribed markets as well as those investments which are related to such qualifying investments. The Commodity Markets that are prescribed markets are all our commodity derivatives exchanges (ICE, LME, NEL, LIFFE and ETFs/Commodity based securities on the LSE) and so are subject to our Market Abuse Regime whilst Commodity MTFs (the main ones being Spectron, ICAP, GFI, Prebon, TFS and Global Coal) are not.</p> <p>Section 397 of the Financial</p>	<p>The UK's implementation of MAD is superequivalent at least until 30 June 2008. Sections 118(4) and (8) of FSMA contain the superequivalent offences the continuance of which the UK Treasury will review before May 2008.</p> <p>Insider dealing (Section 118(4) FSMA) - prohibits behaviour (not covered by the offences drawn from the Market Abuse</p>	To date the UK does not have any proven cases of Insider Dealing or Market Manipulation in the Commodity derivatives Market.

	<p>Services & Markets Act (FSMA), sets out the criminal offence of market manipulation, which also applies to commodity derivatives.</p>	<p>Directive) in relation to relevant information not generally available, subject to the 'regular user test'.</p> <p>Omission of this provision in the directive does not explicitly prohibit people from trading to their advantage and to the disadvantage of others on the basis of information not generally available to investors.</p> <p>Market manipulation (Section 118(8) FSMA). Prohibits behaviour (not covered by the offences drawn from the Market Abuse Directive) which gave a false or misleading impression or distorted markets.</p> <p>It catches "other behaviour" (not covered by the offences drawn from the directive) which gave a false or misleading impression or distorted markets. Examples of the sorts of behaviours that are not captured in the directive include:</p> <ul style="list-style-type: none"> inaction which leads to a distortion of a market; a course of conduct such as manipulation of commodity delivery 	
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		<p>mechanisms /grading facilities which can send false or misleading impressions, but may not be transactions or strictly speaking involve the dissemination of information.</p> <p>Omission of this provision in the directive does not, for example, explicitly prohibit someone from giving a false and misleading impression affecting trading in commodity derivatives by the movement of physical commodity stocks.</p> <p>Whilst we cannot provide examples of commodity derivatives cases where this type of behaviour has occurred we believe it is more than just a theoretical possibility.</p>	
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