

## TERMS OF REFERENCE

### Commodity Derivatives Task Force (CDTF)

1. ESMA achieves its mission to enhance investor protection and promoting stable and orderly financial markets through four activities: (i) assessing risks to investors, markets and financial stability, (ii) completing a single rulebook for EU financial markets, (iii) promoting supervisory convergence and (iv) directly supervising specific financial entities.
2. The ESMA Regulation<sup>1</sup> states that ESMA shall act within the powers conferred by this Regulation and among others within the scope of Regulation (EU) No 648/2012 (EMIR), Directive 2014/65/EU and Regulation (EU) No 600/2014 (MiFID II and MiFIR) where related to commodity derivatives and any further legally binding Union act which confers tasks to ESMA on commodity derivative matters and any other Union act for which ESMA needs to be consulted for these matters.
3. In order to fulfil its mission, the Board of Supervisors has established the Commodity Derivatives Task Force (CDTF). The Terms of Reference cover the responsibilities and tasks of this group and the Procedures for ESMA groups (ESMA/2011/BS/236rev2) set out the rules concerning its structure, governance and working methods.
4. In line with the ESMA 2020-200 Strategic Orientation (ESMA22-106-1942), the Commodity Derivatives Task Force will consider in all its activities how to (i) promote sustainable finance and long-term oriented capital markets, (ii) develop digital finance as an opportunity for market participants and regulators, (iii) achieve a proportionate approach.

### Responsibilities

5. The CDTF contributes to ESMA's mission by addressing issues related to:
  - *Assessing the Risks to Investors, Markets and Financial Stability, including:*
    - o Identifying the most accurate sources of information regarding commodity derivative markets, and gather data, including in relation to their underlying;
    - o Analysing trends and market developments such as identifying the implications of highly automated trading and the use of complex trading systems; and
    - o Monitoring and analysing significant regulatory and industry developments relevant for all types of commodity financial markets (such as any legislative changes for energy markets, emission allowances, agricultural commodities and other relevant markets,

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<sup>1</sup> Regulation (EU) 2019/2175 of the European Parliament and the Council amending Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority)

IOSCO reports, regulatory proposals of the US CFTC, G20 statements or further commitment letters from the industry to the OTC Derivatives Supervisors Group).

- *Promoting Supervisory Convergence, including:*
    - o Implementing EU legislation in the commodity derivatives field and fostering supervisory convergence. The CDTF shall facilitate the implementation process of competent authorities by coordinating convergent implementation across the Union, by discussing specific supervisory cases and by assisting the implementation of provisions imposing a direct obligation on ESMA;
    - o Drafting and submitting to the Board relevant materials that promote supervisory convergence in the area of commodity derivatives;
    - o Developing protocols and procedures as necessary to facilitate appropriately co-ordinated implementation of the position limits, reporting and management provisions, and the ancillary activity exemption, as well as assisting in the creation of necessary IT systems at the ESMA level; and
    - o Analysing issues of co-operation between financial regulators/ESMA and other regulatory and supervisory authorities such as the Agency for the Cooperation of Energy Regulators (“ACER”) and national energy regulators. In particular, the CDTF shall analyse any impact the implementation and application of the Regulation on Wholesale Energy Market Integrity and Transparency (“REMIT”) may have on financial market regulators. In this context, the CDTF will liaise with ACER on an on-going basis and consider ACER’s recommendations, if any, regarding procedures which could improve market integrity and the functioning of the internal market.
  - *Completing a Single Rulebook for EU financial markets through the:*
    - o Participation in, or provision of support to the EU legislative process, including amendment to implementing measures relevant to commodity derivatives by providing technical advice to the European Commission (the “Commission”);
    - o Drafting and reviewing ESMA technical standards; and
    - o Provision of additional input to the European Commission where necessary, such as drafting reports foreseen in MiFID II.
6. In performing those tasks, the CDTF shall take into account the developments in other jurisdictions (mainly the US) and in international fora (e.g. IOSCO). The CDTF shall also analyse and develop proposals, as appropriate, in the context of the UK leaving the Union.
7. In line with ESMA’s product monitoring obligation under Article 39 of MiFIR and coordination and position management powers under Articles 44 and 45 of MiFIR, the CDTF will put in place means to identify potential investor protection concerns, threats to the orderly functioning and integrity of financial/commodity markets, and to the stability of the financial system and, where appropriate, assess them in accordance with the agreed methodology and procedures, or refer them to another committee for such assessment.
8. The CDTF shall liaise and coordinate with other relevant groups reporting to the Board of Supervisors where its activities relate or are complementary to those of other groups.

**Structure and governance**

9. The responsibilities of the Chair, rapporteur and members of the CDTF are as set out in the Procedures for ESMA groups.
10. Temporary groups reporting to the CDTF may be set-up when required in line with the Procedures for ESMA groups.
11. ACER shall be able to attend meetings of the Task Force as an observer upon invitation of the rapporteur if ACER's presence is appropriate due to energy markets specific items on the agenda.
12. The CDTF may established a Consultative Working Group. The Task Force can – where appropriate – and in liaison with the rapporteur of the relevant Standing Committee consult other Consultative Working Groups.
13. The CDTF will meet on a regular basis as required in order to deliver ESMA's (multi-) annual work programme. Meetings of substructures will be organised as necessary to enable the CDTF to fulfil its tasks.

**Review**

14. The third term of the CDTF shall end in March 2022. At that time, the Board of Supervisors should assess whether there is a need to extend its term.
15. The Terms of Reference will be reviewed every two years by the Board of Supervisors.