



## EUROPEAN COMMISSION

Directorate General Financial Stability, Financial Services and Capital Markets Union

The Director-General

Brussels,  
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Ms Verena Ross  
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Markets Authority  
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**Subject:**        *Response to the current level of margins and of excessive volatility in energy derivatives markets*

Dear Ms Ross,

The current situation of high prices and high volatility on energy markets and the impact it has on energy traders has prompted the Commission to reflect on the functioning of those markets. Two particular aspects have been brought to the forefront and deserve a closer look, on the one hand the question of circuit breakers on these markets and on the other hand the liquidity strains faced by energy companies when clearing their transactions.

### **On circuit breakers**

Among measures outlined in the Commission's non paper for the Energy Council held on 9 September, the Commission announced that it will assess the application of circuit breakers to address episodes of increased intraday volatility on energy markets. In this context, the Commission will examine two particular topics – circuit breakers themselves and price limits (collars) used to reject orders where they breach certain price limits.

To assist the Commission in this exercise, I call on ESMA to conduct the following assessment without delay.

**With regards to circuit breakers**, ESMA should investigate why trading venues have not triggered circuit breakers (trading halts) in the course of the current energy crisis, despite instances of extreme volatility and price movements on gas and electricity markets. ESMA should also explore whether the rules on circuit breakers, currently governed by Article 48(5) of Directive 2014/65 (MIFID II), need to be aligned across the Union. This is to ensure that all five electricity exchanges follow a coordinated and harmonised approach when confronted with energy price volatility. In operational terms, ESMA should assess whether targeted changes to the existing legislative framework are needed to establish a uniform application of trading halts, including whether Level 1

amendments are necessary to adopt these changes. Given the urgency of the situation, **ESMA should report back with concrete proposals for regulatory changes by 29 September at the latest.**

**With regards to price limits**, ESMA should assess whether targeted changes are needed to establish a uniform application of price limits across the EU. Price limits are currently governed by Article 48 of Directive 2014/65 (MIFID II) and further specified in Article 20 of Delegated Regulation 2017/584 (RTS 7). They require trading venues to have in place procedures to reject certain orders once they breach certain price limits (either “limit up” or “limit down”). Existing rules on price limits in level 2 (Article 20 of RTS 7) might need to be tightened to enable trading venues to more decisively manage intraday volatility spikes affecting energy markets. While such mechanisms would not make volatility disappear, they might make it more incremental, which could also make it easier for market participants to manage their intraday margin calls resulting from large price movements over short periods. In operational terms, ESMA should assess whether targeted changes to the existing legislative framework are needed, including proposal to change Level 1 provisions, where this is indispensable. **ESMA shall report back with concrete proposals for regulatory changes by 17 October at the latest.**

For both exercises, ESMA should determine whether National Competent Authorities (‘NCAs’) ought to conduct enhanced supervision and enforcement of existing or proposed future rules, to ensure that trading venues respond appropriately where the market need arises. If close cooperation at EU level is warranted to achieve better outcomes for the market, ESMA should also assess how best to organise exchange of information and coordination among NCAs.

In view of pressing market conditions, the Commission would favour solutions that can be implemented quickly. Hence, ESMA should prioritise solutions in the form of Level 2 amendments where possible.

I am aware that ESMA has already conducted analytical work on these topics, which proved very useful in understanding the state of play and the existing challenges. It is now essential that concrete measures are put forward to provide a decisive and clear path for trading venues to correctly and consistently deploy the available tools to maintain orderly trading. DG FISMA staff will remain in close contact with ESMA staff and will provide any support needed to proceed swiftly.

### **On margins and collateral**

As you know, the use of derivatives is essential for EU energy companies when planning their operations, giving them greater certainty about supply and pricing in the future. Most of the trading in energy derivatives is conducted on regulated (futures) markets and is centrally cleared via central clearing counterparties (CCPs) established in the EU and regulated under EMIR. In most cases, energy companies access CCPs via a clearing member which is a regulated credit institution. In at least one EU-based CCP, however, some large energy companies provide clearing services directly.

The use of derivatives involves the posting of margin – typically in the form of cash collateral – as a performance guarantee. With the sharp rise in gas and electricity prices over the past year, energy companies have been required to post correspondingly higher amounts of cash collateral to CCPs as margin calls have risen in line with prices. This has resulted in problems of liquidity in EU energy companies as non-financial counterparties, which have been addressed in some Member States in the form of public

guarantee schemes, but that have also prompted calls for amendments to the rules governing collateral requirements for margin calls.

First, I would kindly appreciate if your services could quantify and analyse how the current liquidity strains on energy companies may have shifted part of their trading out of regulated markets and into the bilateral transactions.

Second, margin and collateral requirements are specified under Article 41 and 46 of EMIR, respectively. Both articles are complemented with ESMA regulatory technical standards under Commission Delegated Regulation (EU) No 153/2013 which specifies *inter alia*, the minimum levels of initial margins and the list of eligible collateral. Following recent episodes of volatility in the markets, several Member States have called for a reform of those rules. While there is a general agreement that the level of protection offered to CCPs and therefore the greater financial system is key, the Commission would like ESMA to assess the functioning of those rules in the light of recent market developments. In particular, the Commission would like to know whether applicable Level 2 provisions should be temporarily adapted to alleviate some of the burden faced by energy companies as non-financial counterparties, in hedging their commercial activity on financial markets while keeping the overarching goal of EMIR of preserving financial stability.

In this context, I would kindly ask ESMA to urgently consider temporary amendments to Commission Delegated Regulation (EU) No 153/2013 that would facilitate the provision of collateral by non-financial counterparties active on gas and electricity regulated markets cleared in EU-based CCPs by:

1. Expanding the list of eligible collateral considering, for example, the temporary inclusion of, amongst other assets, EU bonds, carbon emission allowances, commercial papers and/or any other type of collateral you may find appropriate given the typical balance sheet of energy companies;
2. Reviewing the framework applicable to bank and central bank guarantees to allow for an easier and greater issuance and usage of this type of collateral;
3. Reviewing, where appropriate, the requirements on margins and default fund contributions (e.g. antiprocyclicality requirements, transparency, predictability, frequency of margin calls...);
4. Proposing any other amendment you may find relevant;
5. Additionally, given the increase in energy prices in 2022, confirm the appropriateness or otherwise of the recommendation<sup>1</sup> to increase the clearing threshold for commodities and other derivatives in Commission Delegated Regulation (EU) No 149/2013 to EUR 4bn.

These amendments should be temporary and limited in scope: while recognising the pivotal role of financial intermediaries in the provision of clearing services, pursuant to the distinction already made in EMIR and the relevant RTS between financial and non-financial counterparties, these amendment should *in fine* benefit non-financial counterparties active in regulated gas and electricity markets cleared in EU-based CCPs, as it is those counterparties that are particularly hit by the sharp rise in gas and electricity prices over the past year. Liaising with the European Banking Authority, National

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<sup>1</sup> <https://www.esma.europa.eu/press-news/esma-news/esma-proposes-eur-1-billion-increase-commodity-derivatives-emir-clearing>

Competent Authorities and the European Systemic Risk Board, where appropriate, I would kindly ask you to consider this request in an urgent manner.

Taking into account the necessity to provide relief to market participants and incentivise them to return to the markets, I would greatly appreciate if you could give proper consideration to this topic and come back to the Commission with proposed amendments to Commission Delegated Regulation (EU) No 153/2013 **by 22 September at the latest, at least on points 1 and 2 above.** The Commission will then assess any proposal you may submit and, if adopted, submit them to the European Parliament and the Council's scrutiny.

My services look forward to engaging closely with ESMA on these matters in the coming days.

Yours sincerely,

(e-signed)

John BERRIGAN

Cc: Mr José Manuel Campa, Chair of the European Banking Authority