**Q168. Do you agree with the approach suggested by ESMA in relation to the overall application of the thresholds? If you do not agree please provide reasons**

We do not believe that MiFID was intended to regulate trading of non-financial transactions in the physical market or to inhibit hedging activity by commercial users. But we can see why this uncertainty has been generated (in particular the very general use of the word ‘forwards’ in the C7 definition). To minimise the uncertainty, it would be helpful if the Commission were to utilise a ‘commercial purposes’ test to the definition that goes wider than energy to include agricultural commodities.  We think that a principles-based approach, which would be applicable to all asset classes, would be helpful.

**Q201. Do you have any comments regarding ESMA’s proposal regarding what is a non-financial entity?**

Even if bona fide physical/commercial forward contracts are carved out of the financial instrument definition of MIFID 2, then growers, processors (maltsters, millers etc) and merchants will still be impacted by MIFID 2 when they buy and sell financial instruments to hedge, they fall within scope of MiFID II – so they have to seek an exemption from the requirement to be authorised, notifying the national competent authority annually.  The annual requirement may not be waived, but we hope this can be done in a light touch way, for example via the web. Ideally, farmers would simply need to submit a short notification to their regulator that they are using the relevant MiFID II exemption, with no need for further approval.