

## 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) 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). These Terms of Reference cover the responsibilities and tasks of this group, and the Procedures for ESMA Groups (ESMA/2011/BS/236rev3) sets out the rules concerning its structure, governance and working methods.

### Responsibilities

4. In line with the ESMA 2016-2020 Strategic Orientation, (ESMA/2015/935), the CDTF contributes to ESMA's mission by addressing issues related to promoting stable and orderly financial markets. In particular by:
  - *Assessing Risks to Investors, Markets and Financial Stability:*
    - 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 the European

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<sup>1</sup> 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) amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC.



Commission's proposals on energy markets, emission allowances, and agricultural commodities, 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:*

- 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, and by assisting the implementation of provisions imposing a direct obligation on ESMA;
- drafting and submitting to the Board relevant materials that promote supervisory convergence in the area of commodity derivatives;
- 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
- 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:*

- Participating in, or providing support to, the EU legislative process, including amending implementing measures, relevant to commodity derivatives by providing technical advice to the European Commission (the "Commission");
- drafting and reviewing ESMA technical standards; and
- providing additional input to the European Commission where necessary, such as drafting reports foreseen in MiFID II.

5. 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).

6. In line with ESMA's powers under Articles 39, 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.
7. The CDTF shall liaise and coordinate with other relevant groups reporting to the Board of Supervisors where its activities relate to, or are complementary to those of other groups, especially regarding the following initiatives: the Capital Markets Union, the Securities Financing Transaction Regulation and the EMIR review.
8. The CDTF shall also assist relevant Standing Committees in the implementation and convergent application of EU law linked to commodity derivatives.

### **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 and with the agreement of the Chair if ACER's presence is appropriate due to energy markets specific items on the agenda.
12. The CDTF has established a Consultative Working Group (CWG).
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.
14. As the scope of work to be undertaken may have an impact on the work of other Standing Committees, mainly the Secondary Markets, Post-Trading, Market Integrity, Market Data, CEMA and Investor Protection & Intermediaries Standing Committees ("the relevant Standing Committees"), the CDTF will follow the guidance below:
  - the CDTF will report directly to the Board of Supervisors. However, it will consult with the relevant Standing Committees (or specific task forces established by them) with sufficient time to enable them to contribute to its work before submitting its outcome to the Board of Supervisors. The relevant Standing Committees potentially affected by the work of the CDTF will be given at least five working days to provide their comments;
  - rapporteurs and members of the relevant Standing Committees willing to become observers will be included in the distribution list of the CDTF;



- where the relevant Standing Committees request - for areas connected to commodities and commodity derivatives markets and being within the scope of their work - the advice or assistance of the CDTF, it will provide it.
15. The CDTF may rely on assistance of CWGs established by other Standing Committees where this is appropriate and suitable.

### **Review**

16. The third term of the CDTF shall end in December 2019. At that time, the Board of Supervisors should assess whether there is a need to extend its term.
17. The Terms of Reference will be reviewed every two years by the Board of Supervisors.