

Mr. Steven Van Ackere
Minister of Finance
Belgium

Re: ECOFIN Council of December 4th 2012 - Markets in Financial Instruments (MiFID/MiFIR) – ensuring effective position limits on commodity derivatives

22th November 2012

Dear Mr. Van Ackere,

You are in the final stages of negotiating the Council's general approach on the review of the Markets in Financial Instruments Directive and Regulation (MiFID/MiFIR). In light of the latest compromise text proposed by the Presidency (doc. 15275 REV4 of 20 Nov. 2012), we would like to highlight a number of concerns in relation to position limits on commodity derivatives (articles 59 and 60 MiFID). Our organisations believe that getting these provisions right is essential to limit harmful speculation while restoring the price discovery and hedging functions of markets. Strong evidence supports that a link exists between speculation by financial counter-parties and greater food price volatility and, in some cases, higher food prices. High and volatile food prices have had a devastating impact in poor and food import dependant countries, causing increased hunger, conflict and instability.

Position limits should be set at EU level to ensure consistency across the Union and to prevent regulatory arbitrage. The current proposal (article 59.1 and 59.7 MiFID) limits the power of ESMA to determining the criteria to be taken into account by competent national authorities when establishing position limits. This will almost certainly lead to regulatory arbitrage between Member States undermining the effectiveness of position limits. The text must be amended to grant the power to establish position limits to ESMA, in line with the text that has been adopted by the European Parliament.

Exemptions to position limits must be limited to bona fide commercial hedgers on a transaction basis. The current proposal (article 59.1 last par. MiFID) extends the exemption to the "treasury financing activity of a non-financial entity" and to "a person who acts on behalf of that non-financial entity". This wording creates very significant loopholes that must be removed to ensure the effectiveness of position limits. Here again, it must be amended, in line with the wording adopted by the European Parliament.

Position limits must apply to delivery month, each single month and all months combined. Although limits are particularly important for the delivery month when traders traditionally roll over their positions, excessive speculation can occur throughout the life cycle of a contract. Article 59.1 must

therefore be amended to specify that position limits must be established for delivery month, each single month and all months combined.

Position limits must apply in the same way to cash settled and physically settled contracts. The proposed list of criteria to be taken into account (article 59.7 MiFID) could lead to ineffective position limits being established. Traders arbitrage between cash- and physically-settled contracts, so distortions in the cash-settled contract can affect the physically-settled ones. A lack of (or wider) limits for cash-settled contracts could encourage traders to shift their trading from the physically- to the cash-settled market, resulting in a loss of liquidity in the former. It could also increase incentives for manipulation, as cash-settled contracts are settled using the physically-settled contract price. To avoid this, it is important to delete article 59.7 (a) (“whether the financial instruments can be physically settled or are cash settled”).

Weekly public reports must also include aggregate positions held across all trading venues. Effective oversight and enforcement of position limits requires aggregation of data by ESMA at European level. Article 60.1 MiFID must be amended along the lines of the text adopted by the European Parliament to include the following wording: *“ESMA shall develop draft implementing technical standards to specify the measures to require all reports referred to in point (a) of paragraph 1 to be sent to ESMA at a specified weekly time, for their centralised publication by the latter.”*

We remain at your disposal to answer any questions that you may have and to meet you or your advisors as needed.

Sincerely,

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