April 23, 2025

Via Online Submission

Ms. Maria Luis Albuquerque
Commissioner, DG FISMA
European Commission
1049 Brussels, Belgium

Mr. John Berrigan
Director-General, DG FISMA
European Commission
1049 Brussels, Belgium

Re: European Commission Review of the Functioning of Commodity Derivative Markets and Certain Aspects relating to Spot Energy Markets

Dear Ms. Albuquerque, Mr. Berrigan:

MFA[1] appreciates the opportunity to represent the views of the global alternative investment industry in this written response to the European Commission's ("**Commission**") consultation paper on its review of the functioning of commodity derivative markets and certain aspects relating to spot energy markets (the "**Consultation Paper**"). We have set out our responses to the relevant questions of the Consultation Paper in the Annex hereto.

At a high level, MFA is supportive of efforts to simplify the EU commodity derivatives regulatory regime to remove barriers to entry, reduce excessive bureaucracy, and promote the competitiveness of EU markets. Where regulators and trading venues are given tools to intervene directly in the markets, we also advocate for greater transparency surrounding the use of these tools. Furthermore, we believe there is

1 Managed Funds Association (MFA), based in Washington, D.C., New York City, Brussels, and London, represents the global alternative asset management industry. MFA's mission is to advance the ability of alternative asset managers to raise capital, invest it, and generate returns for their beneficiaries. MFA advocates on behalf of its membership and convenes stakeholders to address global regulatory, operational, and business issues. MFA has more than 180 fund manager members, including traditional hedge funds, private credit funds, and hybrid funds, that employ a diverse set of investment strategies. Member firms help pension plans, university endowments, charitable foundations, and other institutional investors diversify their investments, manage risk, and generate attractive returns throughout the economic cycle.

scope for the Commission to streamline requirements to remove duplication and reconsider areas where the cost of reporting exceeds the supervisory benefit.

Executive Summary

In our detailed comments that follow in the Annex, MFA addresses certain specific questions important to MFA member firms. As set forth in the Annex, MFA:

- Supports the simplification and harmonisation of the overlapping EU commodity derivative reporting frameworks
- Opposes mandating that members of trading venues regularly submit comprehensive position data across their trading venues and OTC contracts as part of standard reporting requirements because such a requirement raises significant commercial and legal challenges, including competition law, conflicts of interest, and confidentiality concerns
- Supports greater transparency surrounding the use of position limits and circuit breakers by trading venues
- Does not support the introduction of a "location policy" for EU energy derivatives trading to take place only by EU entities
- Does not generally support the extension of MiFID rules relating to energy derivatives to spot energy trades, save where the extension of such rules would resolve disruption to the market

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MFA appreciates your consideration of our recommendations. We look forward to working with the Commission to improve commodities derivatives regulation to protect investors, support U.S. / EU economic growth, and promote capital formation. We would be pleased to discuss our recommendations in further detail. Please do not hesitate to contact me at rhailey@mfaalts.org.

Sincerely,

/s/ Rob Hailey

Rob Hailey
Managing Director
Head of EMEA Government Affairs.

ANNEX

SECTION 1: DATA ASPECTS

Q1: Do you believe that REMIT reporting, on the one hand, and MiFID/MiFIR/EMIR reporting, on the other hand, should be streamlined and/or more harmonised? If so, could you point to specific reporting items that need to be streamlined/aligned, and how?

In particular, please explain whether the provision under REMIT which aims at avoiding double reporting for transactions already reported under the financial framework effectively allows to prevent double reporting and, if not, why.

Yes.

The current EU transaction reporting landscape is a complex and overlapping regime which places a significant operational and compliance burden on market participants. MFA recognises the importance of transaction reporting in enabling trading venues and regulators to monitor for issues such as systemic risk and market abuse. However, we believe there is scope for the Commission to streamline requirements to remove duplication and reconsider areas where the cost of reporting exceeds the supervisory benefit.

MFA encourages the Commission to closely consider the overlap and discrepancies between the REMIT / MiFID / MiFIR / EMIR reporting frameworks in its review, giving due consideration to the substantial effect that transaction reporting requirements have on firms' operating efficiency and international competitiveness. As such, MFA advocates for limiting the data required for transaction reports to only that which is essential for effective supervision.

MFA supports efforts to harmonise the transaction reporting regimes. However, MFA does not see the value in a common dataset being reported multiple times, to different receiving entities, for different purposes. In our view, recent reviews and efforts to harmonise reporting regimes in the EU have had the undesirable consequences of placing additional burden on market participants by adding new fields and format changes to the reporting requirements.

The Commission is encouraged to consider the potential benefits of establishing a common dataset to be reported once in compliance with multiple reporting regimes, which would allow regulatory authorities access in order to extract the information needed in order to perform their duties.

In relation to REMIT reporting, MFA supports limiting the scope of transaction reporting to counterparties established in, or operating out of a branch established in, the EU. Recital 19 of REMIT provides that:

> "[R]eporting obligations should be kept to a minimum and not create unnecessary costs or administrative burdens for market participants. The uniform rules on the reporting of information should therefore undergo an ex-ante cost-benefit analysis, should avoid double reporting, and should take account of reporting frameworks developed under other relevant legislation. Furthermore, the required information or parts thereof should be collected from other persons and existing sources where possible."

Currently, REMIT requires non-EU market participants to register with the EU Agency for the Cooperation of Energy Regulators ("**ACER**") and report transactions in wholesale energy products. As such, in this regard, REMIT is out of step with EMIR and MiFIR, which broadly speaking apply to entities that are established in the EU (and only investment firms authorised in the EU, in the case of MiFIR transaction reporting). In our view, the current scope of transaction reporting under REMIT goes beyond the minimum necessary for REMIT to achieve its policy objectives.

In relation to its market abuse monitoring objective, we note that MiFIR transaction reporting has the same stated objective, but this reporting obligation is not extended to non-EU firms. As such, MFA does not see any reason to take a divergent approach in the context of REMIT reporting. Furthermore, MFA notes that, in the majority of cases where non-EU market participants trade in REMIT products, such trading activity is carried out either on Organised Market Places ("**OMPs**") such as trading venues (whether directly, or via an intermediary) which are already obliged to make their order book data available to ACER.

Alternatively, MFA notes that in the UK, the Office of Gas and Electricity Markets ("**Ofgem**") has not required market participants to report their transactions since Brexit. Instead, Ofgem monitors trading in UK wholesale energy markets using data collected from OMPs under Regulation 9 of the Electricity and Gas (Market Integrity and Transparency) (Enforcement etc.) Regulations 2013.

MFA therefore also suggests that ACER consider dropping the REMIT reporting requirement at least for non-EU REMIT market participants and consider adopting the approach taken by Ofgem in the UK to obtain data from OMPs directly. This would help reduce the operational burden and cost on market participants without compromising data received by ACER. In addition, this would serve to lower barriers to entry into the market, thereby enhancing the competitiveness of the EU energy markets.

Q3: Do you believe that a centralised data collection mechanism for collecting data related to REMIT and MiFID/MiFIR/EMIR reporting would alleviate the current reporting burden on market participants?

If so, how could it be alleviated and what level of possible cost savings could result from such exercise (order of magnitude), distinguishing one-off costs and recurring compliance costs (for instance, per year)?

Please also explain, how you would structure such a possible centralised data collection mechanism (both in terms of data collection and dissemination/access) in a way that, on the one hand, would limit the costs of its set-up (i.e., using to the maximum the existing functionalities of trade repositories/RRMs) and, on the other hand, limit any possible one-off costs of adjustment for reporting entities?

Yes.

A centralised data collection mechanism which is consistent across the REMIT and MiFID/MiFIR/EMIR reporting regimes has the potential to reduce the regulatory burden on market participants and reduce some of the costs associated with complying with regulatory reporting under multiple different data formats, submissions protocols and infrastructure.

A centralised data collection should be the basis for streamlining of the reports. Today, the reporting flow for each regulatory regime is different, as set out below:

- REMIT reporting flow is from OMP to Registered Reporting Mechanism ("**RRM**") to ACER.
- EMIR reporting is transmitted to trade repositories.

- MiFIR transaction reporting is from reporting firms (or Approved Reporting Mechanism ("**ARMs**") if outsourced) to home National Competent Authority ("**NCAs**") and Transaction Reporting Exchange Interface ("**TREM**").

In addition, the data content and format of each reporting regime differs substantially. A centralised data collection mechanism should be complimented by harmonising the dataset in order to promote a non-duplicative framework as outlined in our response to Q1 above.

Q4: Do you believe that data sharing through the above-mentioned centralised mechanism consolidating the data would improve supervision by NCAs, NRAs, ESMA and ACER? And if so – in which way?

Yes.

A centralised data collection mechanism would help to streamline the data gathering exercise, improve data quality and minimise discrepancies, errors and/or inaccuracies in reported data for the consumption of the relevant regulators. Regulators would not need to expend resources reconciling different sources and formats of data, which would free up capacity for data analysis to monitor for market abuse and systemic risk.

However, access to data by the regulators should be limited to those products within their supervisory scope, that is, financial services regulators should have access pertaining only to financial instruments, and wholesale energy regulators should have access to data pertaining to wholesale energy products only.

Q5: In the event that the centralised reporting mechanism is deemed an appropriate measure, by what entity should energy spot and derivatives markets data be consolidated? (please select the relevant items):

a. by trade repositories?

b. by RRMs?

c. by a new type of entity in charge of consolidating data collected by trade repositories and RRMs?

d. some other entity? Please specify.

Please explain.

By trade repositories.

MFA suggests that trade repositories should be considered as the centralised reporting mechanism for a consolidated regulatory reporting database in the EU, collecting all reporting data required via the common dataset as advocated for in the response to Q1 above.

Trade repositories currently already cater to multiple EU regulatory transaction reporting regimes, namely EMIR and SFTR. The trade repository framework is well-known to the market, and so expanding the mandate of trade repositories would be, in MFA's view, the most efficient method for collecting energy spot and derivatives market data.

Q6: Do you believe there is a better alternative to a central data collection mechanism for improving collection and sharing of data collected under REMIT and MiFID/MiFIR/EMIR?

If so, could you please describe it?

Yes.

See response to Q5.

Q7: In the event that the centralised reporting mechanism is deemed inappropriate, should an alternative approach be considered whereby NCAs have systematic access to the ACER central REMIT database, and vice-versa?

Yes.

Whilst MFA strongly supports the introduction of a centralised database for the reporting of a common dataset, to be reported once in compliance with multiple reporting regimes, if this mechanism is deemed to be inappropriate, NCAs should be able to access to ACER's database, and vice-versa, so that market participants are not required to submit the same data multiple times to different reporting mechanisms.

SECTION 3: POSITION MANAGEMENT AND REPORTING

Q32: In which of the following cases should venues trading in commodity derivatives receive the full set of information on positions of market participants trading on their venues? (please select the relevant items, if any):

- **positions held in critical or significant contracts based on the same underlying and sharing the same characteristics, traded on other trading venues**
- **OTC contracts that relate to the same underlying**
- **related C6 carve out contracts**
- **positions in the underlying spot market**

If you replied yes to any item, please explain how the information can be collected by trading venues and reported in the most cost efficient way. In particular, please specify your preferred option between:

a. imposing additional reporting requirements on market participants (to trading venues), or

b. achieving this through alternative means, such as by leveraging on the existing supervisory reporting channels (e.g., reporting to trade repositories or RRMs), or

c. resorting to the single data collection mechanism as referred to in 1.

Please clarify how your favourite option could be achieved and, if possible, please estimate the cost of additional data collection/reporting, to the extent relevant, for reporting entities. Please identify whether this could lead to any double reporting under the (revised) REMIT (and as will be further detailed in the revised REMIT Implementing Regulation)?

In case you deem that resorting to a single data collection mechanism would be desirable, please specify what types of safeguards should be put in place to maintain confidentiality on sensitive information from potential competitors.

Please note that MFA has selected a response to this question for the purposes of progressing the form only, the ticked response is not indicative of MFA's view, for which see below.

MFA is firmly opposed to mandating that members of trading venues regularly submit comprehensive position data across their trading venues and OTC contracts as part of standard reporting requirements. This stance is due to several commercial and legal challenges, including:

- competition law concerns;
- conflicts of interest concerns;
- confidentiality obligations; and
- statutory or regulatory restrictions Imposed by foreign public bodies.

Enforcing such a requirement would be burdensome and costly for market participants, especially as they are already navigating other regulatory demands, for example, having recently implemented EMIR REFIT. Furthermore, MFA does not consider that it would be desirable from the trading venues' perspective to receive such data. The sheer volume of data would impose a significant operational burden on the trading venues, who would need to establish procedures to receive, store and safeguard this data (particularly in the light of the conflict of interest and confidentiality concerns highlighted above), as well as requiring significant resources, both in terms of personnel and infrastructure in order to properly manage the data flows.

MFA proposes that, instead, trading venues should have the discretion to request additional information from their members only when there are specific concerns about certain contracts. Trading venues are best placed to determine when such information is necessary. However, this discretion should be exercisable only under defined circumstances, such as when there is a tangible risk of market disorder or during extreme market stress. This approach should take into account compliance with competition law and statutory or regulatory restrictions imposed by foreign public bodies, specifically for:

- positions in critical or significant contracts based on the same underlying and sharing the same characteristics as the respective contract traded on other venues; and
- OTC contracts related to the same underlying.

MFA does not consider that it would be appropriate to apply this requirement to C6-carve-out contracts under MiFID or spot contracts, as this would extend the scope of the definition of financial instruments, which would have significant wider ramifications.

Q33: With a view to enhancing the supervision of commodity derivatives markets, do you believe that both energy (where relevant) and securities markets supervisors (ACER, NRAs, ESMA, NCAs, collectively competent authorities) should have access to information on market participants active in derivates markets as regards their positions in:

- **C6 carve out contracts**
- **the underlying spot market**

Please explain whether your reply differs depending on the type of underlying commodity considered.

If you responded yes to either of the above, please explain how the information can be collected by competent authorities and reported in the most cost efficient way. In particular, please specify your preferred option between:

a. **imposing additional reporting requirements on market participants (to competent authorities), or**

b. **if instead it should be done through alternative means, such as by leveraging on the existing supervisory reporting channels, when they exist (e.g., REMIT reporting), or**

c. **as regards energy derivatives, by granting competent authorities access to the single data collection mechanism as referred to in section 1.**

No (in respect of both C6-carve-out contracts and the underlying spot market).

MFA supports the exchange of information between energy and securities market regulators and acknowledge the existing frameworks facilitating this, such as the memorandum of understanding between ACER and the European Securities and Markets Authority ("**ESMA**") dated 6 March 2023.

However, MFA believes that any information sharing should only pertain to instruments under the jurisdiction of both energy and financial services regulators, such as gas and power derivatives. Accordingly, we do not see the policy justification behind the exchange of data regarding C6 carve-out contracts and the spot market between ACER/NRAs and ESMA/NCAs when it does not involve instruments or regulations within ESMA/NCAs' jurisdiction, as this could blur the lines between REMIT and financial services regulation.

MFA does not see a need for additional reporting requirements for this purpose, as this could lead to redundant reporting and regulatory overreach. Instead, we suggest expanding supervisory reporting channels or granting competent authorities access to a unified data collection mechanism.

SECTION 4: POSITION LIMITS

Q42: **Do you believe that the current criterion to determine whether a contract is a 'significant or critical contract' is fit for purpose, and why?**

If not, how should it be reviewed? In particular, do you believe that this definition should vary depending on the underlying commodity?

No.

MFA supports applying position limits only to certain "critical" commodity derivatives contracts, for which disorderly trading would have the greatest impact on commodity markets and their users.

Trading venues should be responsible for determining which contracts are "critical" and setting position limits for this narrow set of critical contracts and extend the application of the position limit regime only to contracts that are sufficiently related to the critical contracts. MFA supports the judicious and limited designation of contracts as "critical" for purposes of applying position limits.

Q44: **Contracts with the same underlying and same characteristics subject to position limits are sometimes traded on several trading venues. Do you believe that the level of the position limit for those contracts should be set at European level (e.g., by ESMA), as**

opposed to the NCA responsible for the supervision of the main trading venue for that contract?

Do you believe ESMA should be in charge of monitoring and enforcing the position limits for those contracts? Please explain.

No.

MFA supports transferring primary responsibility for setting position limits to EU trading venues, instead of being set at a European, or even national level. See response to Q53 below for more detail.

EU trading venues are better positioned to implement position limits, as they have greater day-to-day visibility into trading volumes, patterns, and trends. MFA notes that this suggestion, if adopted, would be preferable to the approach taken in the US, where there exist two sets of position limits: one set by rule by the U.S. Commodity Futures Trading Commission ("CFTC") for specified contracts (for which trading venues may only set position limits lower than the federal level); and another set by the trading venues.

However, MFA members have expressed concern over the way certain EU trading venues appear to take an arbitrary approach to setting limits. As such, transferring primary responsibility for setting position limits to trading venues should be conditional on requiring trading venues to provide greater transparency relating to the process and methodology for setting position limits. In addition, MFA supports requiring trading venues to engage in consultation and dialogue with stakeholders during the process of setting position limits.

MFA supports the NCAs retaining residual authority to set position limits itself under certain circumstances but expects any exercise by the NCA of such authority to be used sparingly.

Q47: Do you believe that the methodology and the level of the limits set by NCAs, for contracts subject to position limits, is adequate?

If not, please indicate which contracts are in your view not subject to adequate position limit levels.

No.

See response to Q44 above.

Q48: The Draghi report refers to the possibility to set stricter position limits, including by differentiating them by types of traders. Do you believe that position limits should be differentiated, depending on the type of traders/trading activity involved? If so, how?

No.

The Draghi report proposes setting different position limits depending on the type of trader as one of a number of potential policy and supervisory coordination powers (in addition to imposing stricter limits generally, or extending position limits to physically settled derivatives) in order to, amongst other objectives, limit the possibility of speculative behaviours.

MFA does not believe it would be practicable, or desirable, for position limits to be differentiated depending on the type of traders / trading activity involved. The purpose of position limits is to prevent any one entity from manipulating the market by cornering the market. As such, it should not matter who or what type of trader an entity is. Moreover, setting aside the difficulty in determining how to categorise traders and the calibration of position limits for multiple categories of traders, different limits for different traders may result in a fragmented market, and as a result have an overall adverse effect on the efficiency and competitiveness of the EU energy market.

Q53: Do you believe that trading venues:

a. should be given more responsibility in setting position limits in general, for those contracts that are by law subject to position limits (i.e., commodity derivative contracts that qualify as significant and critical or are not agricultural derivative contacts), instead of competent authorities?

b. should be in charge of setting position limits for non spot month versions of contracts subject to position limits, thereby applying regulator set position limits only to spot month contracts, as seen in other jurisdictions?

c. should be required or rather given a possibility to set their own position limits for contracts that are not subject to position limits by law?

Please explain the potential advantages or disadvantages linked to those options.

a. *Yes.*

MFA advocates for giving trading venues greater responsibility over the setting of position limits, as was the case prior to MiFID. Trading venues are closer to the data flows surrounding daily trading activity, and are therefore better suited to set position limits, subject to NCA/ESMA oversight.

A trading venue-administered regime would be more flexible than strict position limits, adapting to changeable market conditions and individual trader behaviours. Venues can monitor positions and intervene based on predefined thresholds or ad-hoc assessments in real-time. This regime could remain subject to the overarching obligation for trading venues to maintain orderly markets under ESMA and NCA oversight.

To ensure consistent implementation, we suggest the Commission consider establishing rules to:

- allow trading venues discretion to set accountability levels and position limits as needed, under regulatory oversight, aligning with MiFID Art. 57(8);
- provide guidance on desired outcomes for position management regimes, consistent with ESMA's principles and regulations like MAR; and
- emphasize flexibility and outcome-focused approaches, avoiding unnecessary burdens while benefiting commodity derivative market participants.

b. *No.*

The power to set position limits for both spot and non-spot months should stay with the same entity/authority to ensure a consistent methodology and certainty for market participants.

c. *Yes.*

See response to a. above. MFA supports giving trading venues discretion to set accountability levels and position limits, whether or not they are currently subject to position limits by law. Trading venues would then be responsible for monitoring when these levels and limits are exceeded and establish procedures to take action where appropriate.

SECTION 5: CIRCUIT BREAKERS

Q58: Do you believe trading venues should be permanently required to implement static circuit breakers to further restrain excessive daily volatility for commodity derivatives specifically, as a complement to circuit breakers already implemented?

If no, what would be the associated advantages and disadvantages?

If you replied yes, how should those static circuit breakers be calibrated?

In particular, should those static circuit breakers apply only to certain types of commodity derivative instruments, or differ depending on the type of commodity derivative considered?

More specifically, should IVMs similar to those provided for by Council Regulation (EU) 2022/2576 be introduced and applied on a permanent basis? Please explain.

No.

Trading venues should not be permanently required to implement static circuit breakers. MFA generally supports giving trading venues the option, but not the obligation, to implement static circuit breakers on a product-by-product basis, should they assess it is strictly necessary to prevent serious market disorder. In addition, MFA considers it would be beneficial to the market for there to be greater predictability around how circuit breakers are established, at what levels, and when they go into effect.

MFA understands that the Commission and ESMA recently considered the use of circuit breakers in the context of the MiFID / MiFIR review, and recently published final draft RTS setting out new technical requirements for the use of circuit breakers,which codifies principles from the existing ESMA Guidelines on the calibration of circuit breakers (ESMA70-872942901-63).

However, while MFA generally supports converting the principles from the guidelines into technical requirements for other asset classes, in relation to commodity derivatives specifically, MFA urges the Commission to consider whether circuit breakers are fit for purpose. Unlike other assets such as equity or credit instruments, commodity derivatives are fundamentally based on a physical market in the underlying commodities with real-world demand. Even if a circuit breaker is put in place for commodity derivatives to halt trading, the underlying commodities will continue to be traded at the prevailing market regardless of the level of price volatility, as the demand for many of these commodities are relatively price inelastic and play a critical role in the real economy. As such, a circuit breaker in the commodity derivatives markets only delays the impact, and in fact may exacerbate the negative effects by creating a disconnect between the derivative and underlying markets, and prevent market participants from being able to effectively hedge their risk in times of increased volatility.

As such, MFA suggests that the Commission commit to reviewing implementation of the new RTS after it comes into force, and canvas opinions from stakeholders in due course. This review should specifically consider the appropriateness of circuit breakers, by asset class, and whether additional conditions / thresholds should be set before circuit breakers may be triggered in the case of certain asset classes.

SECTION 6: THE DRAGHI REPORT

Q64: Do you believe a general obligation to trade in the EU should be introduced?

If so, for which instruments should this obligation apply?

No.

MFA strongly opposes the recommendation in the Draghi report for trading activities in EU energy derivatives to be undertaken by companies trading in the EU, which the MFA understands as requiring such trading to be undertaken by EU entities only (the so-called 'location policy').

It is our view that this legislative provision would:

- impair price discovery, reduce liquidity, and exacerbate volatility in energy markets;
- hamper the ability of firms to effectively manage risk for fund beneficiaries; and
- create market access barriers for third-country firms seeking to trade on European energy markets.

MFA is concerned that the suggested location policy would reduce participation and liquidity in European energy markets. Throughout the economic cycle, third-country firms play a critical role in contributing to price discovery and liquidity in European energy markets. This results in deeper and more resilient markets that are less prone to episodes of extreme volatility, especially against the backdrop of complex global supply and demand dynamics. To that end, requiring third-country firms to establish a physical presence in the EU to access those energy markets will compel a range of market participants—including investors, producers, end users, and liquidity providers—to weigh the costs associated with establishing a physical location and the risks associated with continuing to participate in EU energy markets. Accordingly, the proposed location policy would reduce the resiliency and liquidity of European energy markets if firms decide to reduce their activity in these markets. Liquidity could increase in adjacent trading venues (e.g., the UK) which in turn could attract certain companies to leave EU trading venues for certain products, further hampering the competitiveness of EU markets.

In addition, we are concerned that the location policy would hinder the ability of both EU and third-country firms to effectively manage and hedge risk for investors and fund beneficiaries. The reduced liquidity and heightened volatility from requiring third-country firms to establish offices in an EU Member State(s) to access EU energy derivative markets would have knock-on effects for financial markets, investors, and fund beneficiaries – which include pensions, endowments, and charitable organisations – in both the EU and in third countries. Notably, many fund beneficiaries of third-country MFA member firms are located in Europe and would therefore feel the impact if firms were to withdraw or significantly curtail their investments in EU energy derivative markets.

For their part, key jurisdictions around the world have been closely coordinating to bolster energy security and mitigate energy disruptions stemming from the protracted Russia-Ukraine conflict. The global nature of derivatives markets offers many advantages to its participants—as participation grows, so does the capacity to manage risks. Global regulatory authorities have recognised that a fragmented market damages the robustness of derivatives markets and hinders risk management. Given the international scope of derivatives markets, a unified and collaborative strategy in regulating and overseeing them is essential. For instance, neither the CFTC nor key U.S. exchanges that list energy derivatives contracts (including the

Intercontinental Exchange and the Chicago Mercantile Exchange) have similar location policies for third-country firms trading on U.S. energy markets. Addressing regulatory interoperability and protectionist policies will promote open and competitive markets, reducing costs for end users and consumers, boosting competition and resilience, and promoting economic growth.

Furthermore, as the EU works towards building a robust Capital Markets Union ("**CMU**"), we believe that the proposed location policy could undermine the hard work of EU policymakers to promote an open, fair, competitive, and attractive CMU.

Accordingly, we respectfully urge the Commission not to impose a location policy with respect to the European energy derivatives market. We note a similar proposal was made during the REMIT II legislative process, and subsequently scaled back in the form of the EU designated representative requirement, which itself has posed practical challenges for third-country firms.

Q65: If such a general obligation were to be introduced, please set out any possible impact on EU market participants' ability to hedge, notably with non EU counterparties.

See response to Q64.

Q66: If such an obligation were to be introduced, please set out any possible impact on market participants and the functioning, depth and liquidity of the markets concerned.

See response to Q64.

Q72: Do you believe that requirements similar to some/all organisational requirements imposed on MiFID firms as market participants should also be imposed on market participants in spot energy markets, without requalifying those entities as investment firms, and why?

If so, could you please make specific references to those organisational requirements, which are currently foreseen under MiFID and should in a similar way apply to market participants in spot energy markets? Where possible, could you please estimate expected costs to your entity, and potentially other entities that would have to comply with those new requirements, distinguishing one off costs and recurring compliance costs (for instance, per year).

No.

MFA does not believe that requirements on MiFID firms as market participants should be imposed on market participants in spot energy markets.

Spot energy products are not, and have not, historically been classified as financial instruments under MiFID, and as such market participants trading purely in spot energy markets are not caught under MiFID. MFA considers that this distinction is sound, as spot energy products have an inherently different risk profile to financial instruments such as derivatives. Derivative products allow users to gain exposure to greater risk (and corresponding greater returns) through the use of features such as leverage and optionality, which warrant a higher level of regulatory oversight and supervision.

MFA considers it likely that a significant proportion of market participants in the spot energy markets are not sophisticated financial institutions but rather are corporate / commercial entities that are end-users of the relevant products. As a result, such market participants are less likely to have the formalised systems and controls in place which financial institutions are expected to. Nonetheless, these non-financial institutions play a critical role in the spot energy markets, including providing liquidity, and contributing to price discovery.

MFA acknowledges that the organisational requirements for MiFID investment firms to ensure they are 'fit-and-proper' are beneficial in promoting prudent risk management. However, introducing organisational requirements for non-MiFID market participants that are active solely in the spot energy markets may have the effect of barring certain market participants from entry. MFA therefore urges the Commission to evaluate whether the potential benefits of extending the organisational requirements to spot energy market participants would outweigh the potential outflows of liquidity, and the impact on those commercial entities that are no longer able to access the markets directly.

If the Commission does consider the extension of such organisational requirements to spot energy market participants to be necessary, careful consideration should be given to ensuring that the requirements are proportionate to the risk profile and sophistication of the spot energy market participants.

Q73: Do you believe that key rules similar to those applicable to MiFID trading venues should also apply to spot energy exchanges, and why?

If so, could you please make specific reference to those? Where possible, could you please estimate a possible cost for spot energy trading venues that would have to comply with those new requirements.

No.

MFA does not consider that key rules similar to those applicable to MiFID trading venues should also apply to spot energy exchanges, for the reasons set out in the response to Q72 above.