New EU regulation of commodity derivatives markets

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Harvests and Futures: EU/USA in comparison, 2009

Source: Weiterer Landhandel, CBOT, MATIF, national statistics, Agrarzeitung 26 Nov 2010

EU – Piecemeal regulation

• Internal Market and Services Commissioner Barnier condemned food speculation, so did French President Sarkozy

• Regulation in different laws, i.e. regulations (directly applicable in all Member States) and directives (framework laws, to be implemented by Member States in national laws)
Overview on new regulation

MiFID II

Markets in Financial Instruments Directive (MiFID)

revised

Markets in Financial Instruments Regulation (MiFIR)

new

Market Abuse Directive (MAD)

new

Market Abuse Regulation (MAR)

new

European Market Infrastructure Regulation (EMIR)

new

Commission proposals 20 October, will be decided by Parliament and Council summer 2012 earliest

To be decided by Parliament / Council soon
MiFID/MiFIR:

- Applies primarily to investment firms and regulated markets, partly to credit institutions; one exemption deleted for commodity traders, but other exemptions remain for some dealing on own account and ancillary activities in commodity derivatives
- New “Organized Trading Facilities” (OTF) to cover OTC trading and dark pools, e.g. swap execution facilities (before only “regulated markets” and “Multilateral Trading Facilities”, MTF)
- Algorithmic trading: risk controls by investment firms including trading thresholds/limits, and by regulated markets

EMIR: “Financial counterparties” / “non-financial counterparties”
EMIR:

- Central Counterparty (CCP) Clearing for eligible derivatives
- bottom-up + top-down approach to define clearing eligibilty
- remaining OTC trades: margin/collateral requirements
- non-financial counterparties exempted for hedging, clearing threshold for their financial activities
Transparency

MiFID:

• For commodity markets: Real-time reporting to venues, weekly public report according to class of traders (e.g. credit institution, investment fund, commercial undertaking, ...)

• Pre- and Post-trade transparency for all trading venues, for “systemic internalizers”, and for Exchange Traded Funds: public quotes, prices, volumes and execution times

MiFIR: Real-time reporting by trading venues to authorities: names, numbers, quantity, execution time, prices, client ID designation, algorithms, firms

EMIR: Reporting for all derivatives to “trade repositories” which “regularly” publish aggregate positions
Position and Price Limits

MiFID (only for commodities and emission allowances):

- Position limits on all trading venues for „number of contracts“ entered „over a specific period of time“, or „alternative arrangements with equivalent effect“ to support liquidity or orderly pricing/settlement conditions, or to prevent market abuse
- Commission has power to prescribe position limits, national authorities to apply higher ones only in exceptional cases

MiFIR: New European Securities and Markets Authority (ESMA) to ensure coherent approach for position limits

MiFID: Regulated markets need to “reject orders that exceed pre-determined volume and price thresholds or are clearly erroneous” and “halt trading if there is a significant price movement“
Supervision, Enforcement, and Market Abuse

MiFID/MiFIR/EMIR/MAD in general: Supervision shared between EU (ESMA, Commission) as coordinator and Member States' authorities; no CFTC-like specialised body

MiFID/MiFIR: measures like prohibitions can be taken both by ESMA and Member States' authorities, with several pre-conditions

MAR: Market Abuse and Insider Dealing: now all trading including OTC, commodity spot market transactions having an “effect” on derivatives markets, and algorithmic / high frequency trading.
Thank you for your attention!

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