

Europex Response to the IOSCO consultation on Good Practices concerning OTC Commodity Derivatives Markets

Question 1: Do you agree with the key aspects and scope of the proposed good practices outlined in this Consultation Report? Please share any specific comment on any of the proposed good practices.

We support IOSCO's work and objectives as well as the emphasis on proportionality, risk sensitivity and market-specific application of the proposed good practices.

The consultation defines *Market authorities* as “the relevant governmental regulator, an SRO or operator of the regulated market”. We believe it is important within the proposed good practices to distinguish between the role of exchanges and that of regulators, with the two having inherently different roles and functions. While regulators have a cross-market oversight function with the aim to ensure overall market stability and integrity, exchanges are by definition bound by the responsibility to ensure fair and orderly trading on the markets they operate. Therefore, while we fully agree with IOSCO's statement that “*the primary responsibility for intervening in OTC markets lies with regulators, given their responsibilities to protect market integrity, ensure financial stability, and oversee activity across markets*”, in some instances throughout the consultation documents, the use of “Market Authorities” may for certain jurisdictions such as the EU be confusing as it entails some uncertainty over whether it refers to regulators, exchanges or both.

To fulfil the responsibility, they are bound to by definition, i.e. to ensure fair and orderly trading in the markets they operate, exchanges have a comprehensive toolbox. This includes position management controls as well as, under MiFID, the authority to request detailed information about a market participant's position (including OTC) and rationale behind trading activity/positions in cases of suspected market abuse.

We believe that this toolbox is fit for purpose, with both the regulatory landscape and exchanges' rulebooks ensuring effective visibility without imposing excessive burden or systematic reporting of OTC positions. Therefore, we support the existing needs-based approach, where exchanges can make ad hoc requests for OTC data driven by market surveillance purposes and we warn against introducing any systematic or ad hoc reporting requirements of OTC position data through exchanges. We also call for IOSCO to encourage member jurisdictions to perform a comprehensive data strategy to assess the value of already reported data and the gap in surveillance or market functioning that any additional data streams should aim to fill, to streamline reporting requirements where duplications persist and to facilitate data-sharing amongst regulators.

To this end, we support IOSCO's good practice on information sharing and cooperation among regulators, not only in the context of OTC markets but more broadly, to ensure that - leveraging on already reported data - regulators have full visibility where needed and can effectively carry out their oversight function.

Finally, IOSCO refers to "*critical or significant contracts that are more susceptible to the risk of market abuse or disorderly trading*". Whilst certain contracts indeed play a key role as benchmarks for price formation and in the pricing of the underlying commodity which might increase the systemic relevance of any disorderly trading in such contracts, we would argue they are however not inherently more prone to abusive practices. To the point above, those contracts are typically highly liquid with high trading volumes and a wide variety of active market participants. This, on top of the existing stringent exchange surveillance controls as detailed above, increases their resilience to volatility and/or trading disorders.

Question 2: Are there any further key good practices that could be considered?

In light of our answer to question 1, we believe IOSCO should encourage member jurisdictions to reduce duplications in reporting and to focus on the value of data already reported. In many jurisdictions, exchanges, clearing houses and other market participants deliver similar data to different authorities because of overlapping reporting requirements, causing inefficiencies and imposing a disproportionate burden on the industry. Before introducing any new reporting requirements, member jurisdictions should therefore undertake a comprehensive data analysis and strategy to identify what data is already reported and how this existing data can be collected and used most efficiently, with a view to improving data quality and enhancing cross-border data usability.

Therefore, we believe that additional key good practices should include: focusing on the value of collected data, streamlining existing reporting requirements and refraining from imposing additional ones and encouraging a better collaboration and information/data sharing among energy and financial markets authorities within and across different jurisdictions.

Finally, we note the overarching good practice that underpins all data collection by exchanges in this regard, which is to ensure a clear separation between market surveillance and commercial use of data. This ensures that any OTC data collected is only used for the intended purpose of market surveillance. IOSCO could consider encouraging member jurisdictions to ensure that such a practice is upheld.

Question 3: Under what conditions – such as relevant triggers, scope and frequency – should Market Authorities require OTC position data to be reported to them? What criteria should be used to determine the need for regular or ad-hoc reporting of OTC

position data for effective monitoring and oversight of relevant exchange traded contracts?

This question is an example of the confusing use of the term “market authorities”, as it is not fully clear whether the question is referring to the reporting of OTC data to exchanges and/or to regulators.

Regarding any enhanced reporting requirements to regulators, we refer to our answers to previous questions, where we believe that current requirements are already encompassing.

Regarding any enhanced reporting of OTC data to exchanges, we support the existing needs-based approach whereby exchanges can request ad hoc information to their members on a targeted, case by case, basis, informed by market intelligence.

We strongly believe that determining triggers for such requests shall remain up to the exchanges, driven by market surveillance purposes, to ensure the needed flexibility and adaptability to specific risk circumstances. Therefore, we warn against the establishment of a prescriptive list of criteria to determine any regular or ad hoc reporting of OTC positions to exchanges.

As outlined in responses to the previous questions (question 1 in particular), we believe that the current toolbox that exchanges have is well suited for the purposes of preserving fair and orderly trading on the markets they operate. Moreover, the introduction of any additional regular or systematic OTC position reporting to exchanges would run contrary to the simplification and burden reduction efforts ongoing in several jurisdictions.

Question 4: Do you have suggestions for Market Authorities’ improved use of existing data pipelines for purposes of ensuring market integrity?

We recommend IOSCO members prioritise improving the effectiveness of existing data frameworks rather than introducing new reporting requirements. This includes strengthening data sharing arrangements between authorities, both domestically and across borders, and in particular enhancing collaboration and data sharing among energy and financial markets authorities. Where communication channels between such authorities already exist, member jurisdictions should ensure they are effectively utilised, as data sharing can deliver a more complete view of the market in the short term and without significant cost. Granting authorities systematic access to each other’s existing databases, subject to the relevant need-to-know principle, would be an efficient means of sharing relevant information without imposing additional administrative burden, and is particularly valuable for policy-driven assessments, where access to cross-regulatory data has proven crucial to drawing accurate conclusions about market dynamics.

Question 5: What metrics or indicators do you consider appropriate for assessing the degree of interconnectedness between a related OTC market and an exchange-traded market?

- **At what level would such a measure be considered significant enough to indicate that activity in the OTC market can affect the orderly trading of the relevant exchange-traded market?**
- **Would it be helpful for us to provide further guidance on what constitutes a significant impact in this context?**

Generally, we see little added value in prescriptive indicators or definitions to assess interconnectedness between OTC and exchange-traded contracts and markets. Not only exchange-traded and OTC contracts are different by nature, but OTC contracts can also change very rapidly depending on bespoke use cases, with any prescriptive definition of interconnectedness or relative significance bearing little value.

Of course, stress in relevant OTC markets can transmit to exchange-traded markets and that is precisely why exchanges are empowered to request ad hoc information on (indirect) OTC positions for the purposes of preserving fair and orderly trading on the markets they operate – as described in our answer to question 3. Situations where risks spillovers need monitoring are specific and benefit from flexible and tailored approaches.

Question 6: What types of information could help Market Authorities identify the beneficial owners of positions?

This question (and the following one) are another example of the confusing use of the term “market authorities”, as it is not fully clear whether the question is referring exchanges and/or to regulators’ ability to collect data on beneficial ownership.

We acknowledge that having OTC market visibility is – and should remain – the prerogative of regulators, to effectively perform their oversight function. However, relevant legislation and exchanges’ rulebooks already outline ways and tools to identify beneficial owners of positions.

Question 7: Do you foresee any challenges for Market Authorities in identifying, and obtaining data on, the underlying beneficial owners, and, if so, how could these be mitigated?

Although the question is addressed to “market authorities”, we focus our answer on exchanges.

Exchanges often depend on the willingness or capability of market participants to report information on the end-client often involving long information chains.

However, legislation, leveraging exchange rulebooks and cooperation with NCAs can ensure the maximum possible cooperation from market participants, in a way whereby these challenges do not impair in any way the pursuance of exchanges' mission to ensure orderly trading in the markets they operate.

Question 8: In what circumstances may it be necessary for regulators to intervene in OTC markets, and what potential impact, both positive and negative, might this cause?

N/A

Question 9: What kind of cross-border cooperation do you think is necessary or beneficial to coordinate data collection, both generally and of OTC positions of underlying beneficiary owners?

Enhanced cross-border cooperation among authorities is critical to obtaining a comprehensive view of global commodity derivatives markets. This could include enhanced cooperation, communication and data sharing, especially among energy and financial markets authorities. Such coordination should be feasible in the short term and without significant cost, including by providing mutual access to relevant existing databases, allowing authorities to obtain a more holistic view of financial and physical commodity markets when needed.

It should also be noted that the recently published European Commission report on the functioning of commodity derivatives markets, and the Gas Market Taskforce recommendations on the functioning of EU gas (derivatives) markets respectively recommend: (i) increasing data-sharing between authorities and interoperability of datasets as measures to be pursued in the short-term, (ii) more efficient and improved data sharing, as well as enhanced collaboration between ESMA and ACER.

We therefore support IOSCO's recommendation on information sharing and cooperation and call upon IOSCO to encourage regulators in member jurisdictions to enhance cross border collaboration.

Question 10:

N/A