



EUROPEAN COMMISSION

Directorate General Financial Stability, Financial Services and Capital Markets Union

The Director-General

Brussels,
FISMA C2 GiH/Ares(2022)7001985

Mr José Manuel Campa
Chair of the European Banking
Authority
JoseManuel.Campa@eba.europa.eu

Subject: *Response to the current level of margins and of excessive volatility in energy derivatives markets*

Dear Mr Campa,

As you know, the use of derivatives is essential for EU energy companies when planning their operations, giving them greater certainty about supply and pricing in the future. Most of the trading in energy derivatives is conducted on regulated (futures) markets and is centrally cleared via central clearing counterparties (CCPs) established in the EU and regulated under EMIR. In most cases, energy companies access CCPs via a clearing member which is a regulated credit institution. In at least one EU-based CCP however, some large energy companies provide clearing services directly.

The use of derivatives involves the posting of margin – typically in the form of cash collateral – as a performance guarantee. With the sharp rise in gas and electricity prices over the past year, energy companies have been required to post correspondingly higher amounts of cash collateral to CCPs as margin calls have risen in line with prices. This has resulted in problems of liquidity in EU energy companies, which have been addressed in some Member States in the form of public guarantee schemes but that have also prompted calls for amendments to the rules governing collateral requirements for margin calls.

Margin and collateral requirements are specified under Article 41 and 46 of EMIR, respectively. Both articles are complemented with ESMA regulatory technical standards under Commission Delegated Regulation (EU) No 153/2013 which specifies inter alia, the minimum levels of initial margins and the list of eligible collateral. There is general agreement that the level of protection offered to CCPs and therefore the greater financial system should not be lowered and EMIR should not be modified.

Credit institutions play a major role in providing clearing services to those non-financial counterparties which do not or are not permitted to access CCPs directly. The relationship between client clearing services providers and their clients is not regulated

under EMIR and is mostly based on contractual arrangements between market participants. As non-financial counterparties face difficulties accessing cash or other types of high-quality liquid assets they could post as collateral for their energy derivatives cleared activities, nevertheless, it would be worthwhile reflecting on the role financial institutions play by:

- Exploring possible ways to facilitate the provision of guarantees that could be posted as collateral by non-financial counterparties;
- Assessing how and to what extent banks currently provide collateral transformation services;
- Considering any possible other measures to minimise the liquidity challenges currently faced by energy companies, including ways to improve the transparency, volatility and predictability of margin calls, in particular intraday.

Liaising with the European Securities and Markets Authority, National Competent Authorities and the European Central Bank, where appropriate, I would kindly ask you to consider this request in an urgent manner.

Taking into account the urgency of the issue, I would greatly appreciate if you could give proper consideration to the matters outlined in this letter by 29 September at the latest. I would also urge your cooperation with ESMA on the matters outlined in my letter to ESMA dated 13 September 2022 where we ask ESMA to consider changes to Commission Delegated Regulation (EU) No 153/2013.

My services look forward to engaging closely with EBA on these matters in the coming days.

Yours sincerely,

(e-signed)
John BERRIGAN

Cc: Ms Verena Ross, Chair of the European Securities and Market Authority