



Association française
des marchés financiers

LES PROFESSIONNELS DE LA BOURSE ET DE LA FINANCE

Carlo Comporti
Secretary General
CESR
11-13, avenue de Friedland
75008 Paris

BSM/AM/08-0460

Paris, 29 August 2008

Re : CESR and ERGEG advice to the European Commission
Third Energy Package

Dear Secretary General,

Association française des marchés financiers (AMAFI) is the new name adopted on 19 June 2008 by the French Association of Investment Firms (AFEI). The purpose of the change – the new name means "financial markets association" – is to reflect the fact that AMAFI's remit now extends well beyond the concerns of investment firms alone and addresses issues relevant to financial market participants as a whole, i.e. investment firms, credit institutions and market infrastructures. AMAFI has more than 120 members representing over 10,000 professionals who operate in the cash and derivatives markets for equities, fixed-income products and commodities. Nearly one-third of the members are subsidiaries or branches of non-French institutions. AMAFI's members are active in all the products traded on commodity markets, including gas and electricity derivatives

AMAFI wishes to thank CESR and ERGEG for giving it the opportunity to express its views in the consultation on the draft response to the European Commission on Question F.20 – Market Abuse in the context of the Third Energy Package. It is a pity that such a short timeframe was allowed for responding to the consultation, especially during the summer holiday period, when it is hard to gather practitioners together. For this reason, AMAFI is presenting its response in a simplified format.

AMAFI broadly supports the recommendations put forward by CESR and ERGEG. However, it wishes make the following points.

1. As mentioned in §15 of the consultation document, electricity and gas differ in two key respects. First, electricity, unlike gas, cannot be stored, so generation and consumption must be in balance virtually all the time. Second, whereas electricity is generated in Europe, gas is produced outside the European Union, mainly in Russia, Algeria and Norway. Any future measures must reflect these differences.
2. AMAFI supports the view expressed in §50 of the consultation document. As it currently stands, the Market Abuse Directive (MAD) is not suited to electricity and gas markets. It was essentially designed with classic financial market issues in mind and does not take account of the specific features relating to commodity derivatives generally and especially to information on physical markets.

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A noteworthy quality of commodity derivatives markets is that they greatly help industrial and commercial participants on physical markets to manage their physical commitments. This is a major difference compared with other financial markets, where this type of issue does not exist.

However, AMAFI feels that, insofar as physical electricity and gas markets are already regulated, it would be better to implement ad hoc regulations to prevent market abuse, notably by regulating the publication of sensitive information

3. AMAFI also wishes to reiterate the position it expressed in §19 of its response on 31 July 2008 to the *Consultation Paper on CESR's – CEBS' Technical Advice to the European Commission on the Review of Commodities Business*. More transparency on derivatives markets is pointless unless physical markets are first required to take steps to enhance transparency. AMAFI agrees with the description in §26 *et seq.* of the consultation document on market failures in the electricity and gas markets and market abuse, which identifies problems caused by asymmetric information, particularly on the physical electricity market
4. In AMAFI's view, the following measures are needed to introduce adequate transparency arrangements so as to enhance transparency on physical electricity and gas markets and thus improve the functioning of derivatives markets:
 - Publication of certain fundamental data: in the case of electricity, for example, information should be provided on electricity generation, indicating whether the source is nuclear, wind, hydro, etc. Furthermore, the data should be separated into predictable and/or scheduled information (such as coupon payment dates for equity market issuers) and unpredictable but fundamental information (such as merger plans for equity issuers).
 - Publication of sensitive information: insofar as it would be difficult to prepare an exhaustive list of sensitive information, a definition should be provided for what constitutes sensitive information, and enforcement rules should be established in the form of guidelines
5. CESR and ERGEG should hold a separate consultation on defining this information, with the aim of working with traders to identify the information that they feel, based on their experience, particularly impacts the market. This consultation should be given a timeframe that reflects the importance of the issue. AMAFI stresses that an additional three-month period would not pose a problem, given that the goal is to improve market functioning to the benefit of users and, ultimately, the European economy.
6. The question of MTFs is raised particularly in §44 and 51 of the consultation document. AMAFI wishes to point out that MTFs are already subject to market abuse monitoring obligations under MiFID. However, since these obligations are different from the requirements set out in MAD, harmonisation is needed.
7. To avoid placing an additional burden on intermediaries, wherever possible the required disclosures should be gathered together through market infrastructures, including MTFs.
8. In any event, AMAFI believes that the provisions that are ultimately selected must be completely harmonised at European level.

9. As regards the carbon emissions market (CER), AMAFI wishes to reiterate that this is a new and developing market and that information asymmetries do not affect it in the same way as mature electricity and gas markets. As a result, AMAFI believes that trying to include this market in the Energy Package at this stage could be highly detrimental to its development. However, such inclusion should be a longer-term objective, given that the CER, electricity and gas markets are necessarily extremely interdependent.

In conclusion, AMAFI welcomes the efforts by CESR and ERGEG to adopt measures that will enhance transparency on electricity and gas markets, on condition that these efforts begin with the physical market (cf. above §5). In particular, AMAFI believes that MAD's scope of application should remain unchanged, and that sector directives should be used to address the specific needs of energy markets. These directives should seek to:

- Take account of information about factors that are considered to be "ancillary" but without which availability of the underlying could be seriously affected, in order to enhance transparency and meet MAD requirements. In the case of electricity, this would include information about interconnection capacities, storage and generation.
- Have disclosures gathered together through market infrastructures, rather than via participants, to reduce as far as possible the additional burden that could be placed on participants as a result.
- Give own account traders extra time to report large trades to avoid penalising them unduly.

We will be happy to provide CESR and ERGEG with any clarification that they may require.

Yours truly,

A handwritten signature in black ink, appearing to be "B. de Saint Mars".

Bertrand de Saint Mars
Deputy Chief Executive

C.C.: Johannes Kindler, Vice President, ERGEG