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| Reply Form to the Call for Evidence |
| Position limits and position management in commodity derivatives |

**Responding to this paper**

ESMA invites comments on all matters in this paper and in particular on the specific questions summarised in Annex 1. Comments are most helpful if they:

* respond to the question stated;
* indicate the specific question to which the comment relates;
* contain a clear rationale; and
* describe any alternatives ESMA should consider.

ESMA will consider all comments received by **5 July 2019.**

All contributions should be submitted online at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading ‘Your input - Consultations’. Please follow the instructions given in the document ‘Reply form for the call for evidence on position limits and position management controls in commodity derivatives’ also published on the ESMA website.

**Instructions**

In order to facilitate analysis of responses to the Call for Evidence, respondents are requested to follow the below steps when preparing and submitting their response:

1. Insert your responses to the questions in the Call for Evidence in the present response form.
2. Please do not remove tags of the type <ESMA\_QUESTION\_PLPM\_1>. Your response to each question has to be framed by the two tags corresponding to the question.
3. If you do not wish to respond to a given question, please do not delete it but simply leave the text “TYPE YOUR TEXT HERE” between the tags.
4. When you have drafted your response, name your response form according to the following convention: ESMA\_PLPM\_nameofrespondent\_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA\_PLPM\_ABCD\_RESPONSEFORM.
5. Upload the form containing your responses, in Word format, to ESMA’s website ([www.esma.europa.eu](http://www.esma.europa.eu) under the heading “Your input – Open consultations” 🡪 “Call for Evidence on Position limits and position management in commodities derivatives”).

**Publication of responses**

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publically disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA’s rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA’s Board of Appeal and the European Ombudsman.

**Data protection**

Information on data protection can be found at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading [Legal Notice](http://www.esma.europa.eu/legal-notice).

**Who should read this paper**

All interested stakeholders are invited to respond to this consultation paper. This consultation paper is primarily of interest to trading venues, investment firms and non-financial counterparties trading in commodity derivatives, but responses are also sought from any other market participant including trade associations, industry bodies and investors.

**General information about respondent**

|  |  |
| --- | --- |
| Name of the company / organisation | Commodity Markets Council Europe |
| Activity | Non-financial counterparty |
| Are you representing an association? |  |
| Country/Region | Europe |

**Introduction**

***Please make your introductory comments below, if any***

<ESMA\_COMMENT\_PLPM\_1>

CMCE is an industry association comprised of commodities firms that participate in the agriculture, energy, metals and other commodity markets, price reporting agencies and trading venues established and/or operating in the EU, the EEA, Switzerland and neighbouring countries.

The core business of CMCE’s commodities firm membership is about moving raw materials from where they are produced to where they are consumed, thereby connecting different parts of the supply chain. This helps producers distribute their production and manufacturers secure a reliable supply of raw materials, ultimately allowing consumers access to food, energy and other consumables.

CMCE’s commodities firm membership uses the commodity derivative markets in Europe and globally to hedge some of the risks related to their commercial activities and assets, in particular price risk in the commodities that they buy and sell. Liquid and well-functioning global derivative markets are essential for allowing CMCE Members to do this in an efficient and transparent way.

<ESMA\_COMMENT\_PLPM\_1>

**Questions**

1. : In your view, what impact, if any, did the introduction of position limits have on the availability and liquidity of commodity derivative markets? What are in your views the main factors driving this development, e.g. the mere existence of a position limit and position reporting regime, some specific characteristics of the position limit regime or the level at which position limits are set? Please elaborate by differentiating per commodity asset class or contract where relevant and provide evidence to support your assessment.

<ESMA\_QUESTION\_PLPM\_1>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PLPM\_1>

1. : Have you identified other structural changes in commodity derivative markets or in the underlying markets since the introduction of the MiFID II position limit regime, such as changes in market participants? If so, please provide examples, and where available data, and differentiate per commodity derivative asset class where relevant.

<ESMA\_QUESTION\_PLPM\_2>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PLPM\_2>

1. : Do you consider that position limits contribute to the prevention of market abuse in commodity derivatives markets? Please elaborate by differentiating per conduct, per commodity asset classes or contract where relevant and provide evidence to support your assessment when available.

<ESMA\_QUESTION\_PLPM\_3>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PLPM\_3>

1. : In your view, what impact do position limits have on the orderly pricing and orderly settlement of commodity derivative contracts? Please elaborate by differentiating per asset class or per contract where relevant and provide evidence to support your answer when available.

<ESMA\_QUESTION\_PLPM\_4>

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<ESMA\_QUESTION\_PLPM\_4>

1. : More generally, and beyond the specific items identified above, what would be your overall assessment of the impact of position limits on EU commodity derivatives markets since the application of MiFID II?

<ESMA\_QUESTION\_PLPM\_5>

CMCE members have perceived no significant impact (beneficial or adverse) of the position limits regime under MiFID II on EU commodity derivative markets, apart from the administrative burden and cost involved with needing to put in place procedures to monitor positions and in applying for hedging exemptions, as well as the resulting additional cost across the economy.

<ESMA\_QUESTION\_PLPM\_5>

1. : Do you consider that position management controls have an impact on the liquidity of commodity derivatives markets? If so, please elaborate, differentiating per commodity derivative trading venues or contract where appropriate.

<ESMA\_QUESTION\_PLPM\_6>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PLPM\_6>

1. : Do you consider that position management controls adopted by commodity derivative trading venues have a role on the prevention of market abuse? If so, please elaborate, differentiating per commodity derivative trading venues or contract where appropriate.

<ESMA\_QUESTION\_PLPM\_7>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PLPM\_7>

1. : Do you consider that position management controls adopted by commodity derivative trading venues have a role on orderly pricing and settlement conditions? If so, please elaborate, differentiating per commodity derivative trading venues or contract where appropriate.

<ESMA\_QUESTION\_PLPM\_8>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PLPM\_8>

1. : If you are a commodity derivative trading venue, please explain how you have been exercising your position management controls since MiFID II application. In particular, how frequently did you ask further information on the size or purpose of a position, on beneficial owners or assets and liabilities in the underlying commodity under Article 57(1)(b) of MiFID II, require a person to terminate or reduce a position under Article 57(1)(c) of MiFID II, require a person to provide liquidity back into the market under Article 57(1)(d) of MiFID II or exercise any of your additional position management controls?

<ESMA\_QUESTION\_PLPM\_9>

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<ESMA\_QUESTION\_PLPM\_9>

1. : Do you have any general comment on the position limit regime and associated position reporting introduced by MiFID II?

<ESMA\_QUESTION\_PLPM\_10>

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<ESMA\_QUESTION\_PLPM\_10>

1. : In your view, how will EU commodity derivatives markets be impacted by the UK leaving the EU? What consequences do you expect from Brexit on the commodity derivatives regime under MiFID II?

<ESMA\_QUESTION\_PLPM\_11>

Some uncertainty remains as to the expected impact of Brexit, given that the timing and the modalities for the UK’s exit are at the moment unclear. However, it is expected that following the UK’s departure, trading in certain commodity derivatives asset classes like oil and metals will be marginal or disappear entirely from EU markets. This raises questions as to the calibration of the ancillary activity exemption thresholds as currently provided for under article 2.1(j) of MiFID II and RTS 20.

This issue also has a bearing on the position limits regime, as it dictates the extent to which EU and third country firms may be regarded as “non-financial entities” and therefore eligible for the hedging exemption from position limits.

It is of utmost importance that market participants are duly consulted on any changes that ESMA may deem appropriate to suggest to the ancillary activity exemption thresholds as a result of Brexit; and that sufficient time is left for market participants to prepare for the implementation of any changes.

<ESMA\_QUESTION\_PLPM\_11>

1. : Taking into consideration the intended purposes of position limits, do you consider that they deliver the same benefit across all commodity asset classes and across all types of commodity derivatives? Please explain.

<ESMA\_QUESTION\_PLPM\_12>

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<ESMA\_QUESTION\_PLPM\_12>

1. : Would you see benefits in limiting the application of position limits to a more limited set of commodity derivatives? If so, to which ones and on which criteria?

<ESMA\_QUESTION\_PLPM\_13>

It would be helpful for the EU commodities markets, if the EU adopted a less burdensome approach to position limits, having regard in particular to the approach under consideration in the US.

There may be significant benefits for EU commodity markets in limiting the application of position limits on only the most important contracts (or those most vulnerable to abusive squeezes).

This would reduce the administrative and costs burdens related to position limits for EU market participants, securing the liquidity of commodity derivatives on EU trading venues and facilitating the return to EU trading venues of liquidity that has already moved to other jurisdictions since the entry into force of MiFID II.

Increased flexibility for regulators in setting limits would also be helpful, in particular as regards new and illiquid contracts (please see answer to Q18).

<ESMA\_QUESTION\_PLPM\_13>

1. : More specifically, are you facing any issue with the application of position limits to securitised derivatives? If so, please elaborate.

<ESMA\_QUESTION\_PLPM\_14>

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<ESMA\_QUESTION\_PLPM\_14>

1. : Do you consider that there would be merits in reviewing the definition of EEOTC contracts? If so, please explain the changes you would suggest.

<ESMA\_QUESTION\_PLPM\_15>

Members support the existing EEOTC definition and see no merit in reconsidering it. To recalibrate this definition would have substantial consequences for market participants, trading venues and competent authorities – as it would also drive new streams of position reporting, likely requiring significant IT investment across the industry and its regulators.

<ESMA\_QUESTION\_PLPM\_15>

1. : In your view, would there be a need to review the MiFID II position limit exemptions? If so, please elaborate and explain which changes would be desirable.

<ESMA\_QUESTION\_PLPM\_16>

As noted in our introductory comments above, the core business of CMCE’s commodities firm membership is related to moving raw materials from where they are produced to where they are consumed. It is of utmost importance for the viability of these commodities firms to be able to use the commodity derivative markets to hedge the risks related to these physical activities. Therefore, CMCE Members emphasise the continued importance of the hedging exemption for such firms under the MiFID II position limits regime. CMCE Members do not see a need to amend or revise this existing exemption.

<ESMA\_QUESTION\_PLPM\_16>

1. : Would you see merits in the approach described above and the additional flexibility provided to CAs for setting the spot month limit in cash settled contracts? Please explain.

<ESMA\_QUESTION\_PLPM\_17>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PLPM\_17>

1. : Would you see benefits to review the approach for setting position limits for new and illiquid contracts? If so, what would you suggest?

<ESMA\_QUESTION\_PLPM\_18>

CMCE members believe that the 2500 lot limit for new and illiquid contracts under article 15 of RTS 21 is too restrictive on trading activities in growing markets. While some possibilities exist for NCAs to apply derogations and adjust limits upwards, in practice this has not provided meaningful relief to market participants in new or growing markets who come close to reaching the limits, as regulators have often not been quick enough to increase limits where these are reached to avoid market participants having to move trading activities to venues outside the MiFID II regime.

The 2500 lot limit should therefore be either substantially increased (e.g. to 5000 lots) or NCAs should be given more flexibility in imposing limits to new contracts, for instance by providing for a review period of e.g. 12 months from the launch of a contract during which no position limit is imposed, so that NCAs could observe the evolution of the contract before deciding on the appropriate limits.

<ESMA\_QUESTION\_PLPM\_18>

1. : Would you see merits in a more forward-looking approach to the calculation of open interest used as a baseline for setting position limits? Please elaborate.

<ESMA\_QUESTION\_PLPM\_19>

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<ESMA\_QUESTION\_PLPM\_19>

1. : In your view, are there other specific areas where the methodology for calculating the position limits set out in RTS 21 should be reviewed? If so, what would you suggest, and why?

<ESMA\_QUESTION\_PLPM\_20>

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<ESMA\_QUESTION\_PLPM\_20>

1. : How useful do you consider the information on position management controls available on ESMA’s website?

<ESMA\_QUESTION\_PLPM\_21>

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<ESMA\_QUESTION\_PLPM\_21>

1. : Do you consider that there is a need to review the list of minimum position management controls to be implemented by commodity derivatives trading venues under Article 57(8) of MiFID II? If so, please explain the changes you would suggest.

<ESMA\_QUESTION\_PLPM\_22>

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<ESMA\_QUESTION\_PLPM\_22>