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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 | Iñaki Viggers |
| Activity | Choose an item. |
| Are you representing an association? |  |
| Country/Region | Choose an item. |

**Introduction**

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

<ESMA\_COMMENT\_PLPM\_1>

Hereby Iñaki Viggers shares his perspective that position limits are justifiable only where an agent’s solvency reveals his inability to maintain a position consistent with others’ entitlements and foreseeable decisions pursuant to the terms the financial derivatives. This implies that (1) only *short* positions are amenable to a policy of position limits; and (2) the application of that policy shall be determined on a *case-by-case* basis entirely premised on the agent’s solvency.

Any implementation of position limits beyond the aforementioned criterion triggers the concern[[1]](#footnote-0) best expressed by U.S. Commodity Futures Trading Commissioner Michael Dunn in the sense that “*at best position limits are a cure for a disease that does not exist, or at worst it’s a placebo for one that does*”.

Furthermore, imposing position limits tends to obfuscate the analysis and modeling required to better understand the complexities of financial markets. That renders issues such as *price discovery* needlessly more difficult than in the absence of a generalized regime of position limits.

Altogether, position limits as currently devised by the EU authorities can only hinder the EU’s status and leadership in the financial markets.

<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>

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<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>

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<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>

No. Position limits are ineffective toward preventing market abuse. In fact, the ESMA indirectly concedes --in item 20 of the instant Call for Evidence-- that position limits are unavailing in that regard.

The ESMA conjectures that “*[p]osition limits may cap the financial gain a market participant could potentially make*” when incurring market abuse. But even that presumption is naive. For instance, a person who engages in insider trading can readily circumvent a position limits regime by coordinating with what is known as *straw buyers*. Whereas detecting concerted efforts to circumvent policy is costly and oftentimes futile, the potential distortions of price would be the same as in the absence of position limits,

Furthermore, a position limits regime tends to impress on the rest of market participants the false and misleading notion of a *generalized sentiment* regarding the commodity at issue.

Indeed, the scenario of (1) *one agent procuring a dominant position* portrays a different situation than the scenario of (2) *a multiplicity of [secretly concerted] agents simultaneously reaching the position limit*. Accordingly, each scenario leads to other market participants to reach opposite conclusions. The irony is that a position limits regime propitiates the latter scenario, precisely the one which is more elusive and more misleading in regard to *generalized sentiment*.

<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>

Consistent with the previous answer, the goal of *orderly pricing* is hindered by a policy of position limits.

A multiplicity of [conspiring] agents pursuing one similar position --and each individual doing so to the maximum extent allowed by such policy-- is much likelier to cause a *herd effect* than if everyone else identifies that only one entity seeks to attain a dominant position.

<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>

The policy of position limits should be scaled back so that it applies only for *short* positions, due to the liabilities and solvency issues inherent to the risk or event of adverse price movements.

Clearly, long positions do not entail any sort of solvency issues, whence there is no need to constrain market participants’ range of investment strategies.

<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>

Yes, as provided in Article 57(8) of MiFID II in items (c) and (d). Reasonable controls help ensuring adequate levels of liquidity and solvency. However, the remedies in such controls ought to apply only on a *case-by-case* basis rather than in the generalized scope that the ESMA currently intends.

<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>

No. The matter of market abuse comprises problems which fundamentally differ from what a position limits regime can accomplish.

<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>

Yes to the extent that such controls tend to pre-empt both a spiral of losses (from the standpoint of each individual agent) and a contagion when a cash-strapped agent defaults on his obligations pursuant to the financial derivatives. But the focus should be the issues of liquidity and solvency, not under the artificial approach of *one-size-fits-all*.

<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>

As stated previously, the position limit regime should be scaled back so that it would *potentially* apply only on a *case-by-case* basis on *short* positions.

<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>

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<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>

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<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>

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<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>

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<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>

No. ESMA’s Call for Evidence does not elaborate on how or why an imbalance between derivative and commodity prices would ensue at all, especially as the contract approaches expiration.

The basics of financial derivatives indicates that any discrepancy of that sort would be short lived because of the arbitrage opportunities that such imbalance creates.

<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>

Yes. One consequence of the points made herein is that there should be no “default” or “de minimis” position limits. In the case of contracts with low open interest, setting those limits seems pointless.

<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>

1. US Commodity Futures Trading Comm’n, Transcript of Open Meeting on the Ninth Series of Proposed Rulemakings Under the Dodd-Frank Act, 9 (Jan. 13, 2011). [↑](#footnote-ref-0)