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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 | London Stock Exchange Group (“LSEG”). |
| Activity | Regulated markets/Exchanges/Trading Systems |
| Are you representing an association? |  |
| Country/Region | ITALY |

**Introduction**

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

<ESMA\_COMMENT\_PLPM\_1>

London Stock Exchange Group (“LSEG”) greatly appreciates the possibility of answering this call for evidence.

Borsa Italiana, part of the London Stock Exchange Group (“LSEG”), manages a derivatives market where *energy commodities futures* and *durum wheat futures* are traded and an MTF dedicated to securities derivatives where more than 10.000 financial instruments are traded and that is also impacted by position limits regime.

Borsa Italiana actively collaborates with issuers and intermediaries to promote the efficient and orderly functioning of the markets and with this objective it has developed an automated platform for the position reporting of commodities derivatives in compliance with the position reporting regulation.

Borsa Italiana believes that position reporting and position limits are appropriate for the orderly pricing and the orderly settlement of commodity derivative contracts of liquid and developed markets.

Taking into account the experience gained since the launch of MIFID2, in Borsa Italiana view some aspects of the current regime should be reconsidered. In particular:

* the position reporting regime for new and illiquid contracts could be better calibrated and a **full exemption could be provided for contracts with open interest below a minimun threshold or for new and illiquid contracts;**
* **the securitised derivatives (SD or SDs) should be excluded from the scope** given the specificities of these instruments. In fact, given the huge number of different issuances, the regime provides limited benefits for these instruments also considering that the issuance size already constitutes a position limit *in se*.

<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

Position limits and position reporting regime in commodity derivatives has impacted on the following Borsa Italiana markets:

* IDEM regulated market, where *futures on Italian p*ower (IDEX segment) and *futures on durum wheat*  (AGREX segment) are traded;
* SeDeX MTF, the Borsa Italiana multilateral trading facilities dedicated to the trading of certificates and covered warrants, collectively defined as securitized derivatives (“SDs”) where out of around 10.000 instruments the 2% of the instruments have a commodity underlying.

The introduction of position limits and the position reporting regime had partially contributed to the reduction of trading volumes on commodity derivatives traded on Borsa Italiana markets, impacting also the number of active members in the martket and conditioned the issuance of new products.

1. Reporting obligations are representing an high cost of compliance and an operational burden for participants despite the effort Borsa Italiana has faced to realise an integrated and user friendly system for this reporting.

The perception of the position reporting as an obstacle to an easy access to the market has been particularly significant for non-financial institutions of small and medium size members.

In the three months prior and following the introduction of position limit reporting regime, the number of market participants of IDEM commodity segments has decreased.

1. Moreover, always with reference to our IDEM commodity segments **the regime is not effective**.

With reference to the futures traded on IDEM commodity segments, since January 2018 the combined open interest of our *futures on Italian power* has always been smaller than 2.500 lots, that is the minimum level set by MIFID2 for the position limits for the illiquid contracts.

Borsa Italiana believes that an exemption regime from reporting obligations for new and illiquid contracts could support the development of liquidity on the above contracts and further strenghten the functioning of commercial activities in the underlying commodity markets.

Moreover, given that the position limit can never be exceeded by market participants when the total combined open interest is lower than 2.500 lots, it might be considered to allow a **total exemption at least from the reporting obligation when the combined total open interest of the contract does not exceed 2.500 lots over a consecutive three month period.**

This will support the development of less liquid contracts until the achievement of the limits already foreseen by MIFID2.

1. With reference to **SDs,** the number of issuances on underlyings subject to position limits and position reporting regime has decreased or in some cases has been limited by the issuers to2.500.000 securities in issue[[1]](#footnote-2).

These behaviour of issuers has not to be negatively considered or deemed to have the purpose to avoid the application of a compliance duty but it has be considered as **the evidence that the position limit regime is not an appropriate measure for these instruments.**

In fact SDs are not equivalent to commodity derivatives contracts. The main important point to be considered to this extent is that SDs are transferable securities, hence there are issuance specificities that need to be considered when applying the position limits regime.

SDs market is characterized by a **big number of different issuances** of securities for which **the issuance size of the instruments already provides a position limit *in se*.** The SDs issuance size in fact is registered within the central securities depositary and any possible increase follows its specific procedures, duly approved by the interested competent Authorities. Hence the positions in the underlying commodities that could be held through SDs are limited *in se* and there is no need to extend the SDs the position limits measures that have been designed for commodities derivative contracts, where the amount of the open interest (a consequently of the position) is, in theory, not limited.

Having said that, the ordinary supervision procedures that trading venues have in place for all securities seem to be appropriate for commodities SDs.

This has also been recognised to some extent by ESMA, who stated that “*trading in European securitised derivatives is fragmented with well over 10,000 instruments in issue and liquidity per contract is often low. The potential publication of a multitude of* *weekly in securitised commodity derivatives on a peer security level when position holder thresholds are exceeded would send out a confusing picture to investors rather than serve the envisaged purpose of market-wide transparency*”[[2]](#footnote-3).

Indeed, Article 2(1)(30) of MiFIR that defines “commodities derivatives” as “those financial instruments defined in point (44)(c) of article 4(1) of MiFID II (i.e. transferable securities) which relate a commodity or an underlying referred to Section C(1) of Annex I to Directive 2014/65 EU” should be reviewed **to limit the definition to the commodities derivatives to “derivatives contracts”.**

<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>

Borsa Italiana has noted that following the introduction of the position limits regime and position reporting regime, some market operators have limited the size of their issues.

Moreover some trading venues have inhibited operations in commodity SDs with issue size exceeding 2.5 million.

<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>

We refer to the concerns expressed in our response to Q1 about the effectiveness of position limits regime for commodities SDs.

We agree on ESMA positon expressed at point 22 of the Call for Evidence.

<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>

We refer to the concerns expressed in our response to Q1 for new and illiquid contracts and for commodities SDs.

In our view, position limits are an appropriate instrument for the orderly pricing and the orderly settlement of liquid and developed commodity derivative contracts.

For this reasons, also before the application of MIFID2 Borsa Italiana had established a set of limits for *durum wheat futures* to be activated upon reaching certain internal thresholds. These limits have lapsed with the entry into force of MIDIF2 position limits regime.

<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>

TYPE YOUR TEXT HERE

<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>

Please refer to our response to Q1

<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>

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<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>

Borsa Italiana would like to report the following additional comments:

* For commodities SDs at the time of issue, being all the size of the issue concentrated on the sale side of the transaction (i.e. the issuer holds the totality of the issuance) the issuer always results in breaching the position limits. The same might apply when the issuer appoint an intermediary for the distribution of the issuance (so called specialist).

This aspect further highlights the specificities of SDs - already discussed in Q1 - and the fact that position limits regime is not appropriate for such instruments. Nevertheless if the total exemption of SDs would not be considered viable it might be appropriate to address the above described issue exempting at least the SD issuer - and the specialist - from the position limits regime;

* Furthermore we faced operational obstacles mainly related to the unclear definition of the underlings in scope. Therefore the introduction of ESMA Q&A n. 10, issued on 27th March 2018 which introduced greater clarity at the defining level was much appreciated;
* Others issues have been experienced concerning the reporting format with particular reference to the identification of the position holder when natural person.

For that reason, in order to improve the reporting format and minimize the reconciliation issues, we suggest to specify that for the *commodities* *position reporting,* natural persons have to be identified with the code already used for the *transaction reporting* purposes (RTS24).

<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>

<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>

TYPE YOUR TEXT HERE

<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>

<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>

As detailed in our response to Q1, in our view the position limits regime does not represent an appropriate measure with reference to commodity SDs.

Therefore we advocate for a revision of the scope of the position limits regime through the amendment of the commodity derivatives definition.

For further details please refer also to the response to Q10.

<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>

Please refer to our response to Q1 and and Q10.

<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>

Please refer to our response to Q1

<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>

TYPE YOUR TEXT HERE

<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. ESMA Q&A n°9 as updated on 07th 07 2017 [↑](#footnote-ref-2)
2. ESMA Q&A n°5, issued on 7th July 2017. [↑](#footnote-ref-3)