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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**

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**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 | Nasdaq |
| Activity | Regulated markets/Exchanges/Trading Systems |
| Are you representing an association? |[ ]
| Country/Region | Europe |

**Introduction**

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

<ESMA\_COMMENT\_PLPM\_1>

Nasdaq welcomes the opportunity to respond to this ESMA call for evidence on position limits and position management in commodity markets, to clarify the purpose of the regime and flag some challenges which have the potential to distort the market.

Nasdaq’s commodity derivatives offering is focused on trading and central clearing of electricity derivatives, mainly Nordic contracts but also international contracts, such as German. The Nordic electricity market is considered very liquid and transparent, especially compared to many other markets. The benchmark contracts listed on Nasdaq’s market are also to a certain extent traded on other markets, and vice versa.

As an operator of a commodity derivatives market, Nasdaq has longstanding experience of position monitoring, for purposes of preventing and detecting market abuse, orderly settlement and clearing. This has been in place since long before the MiFID position limits regime was introduced and has been a very useful tool. The basis for this surveillance is the Market Abuse Regulation (MAR) and also REMIT, given Nasdaq operates in the electricity market sector.

We believe the position limits regime has so far functioned in a reasonable manner for a number of well-developed benchmark contracts.These highly developed markets are characterised by a large number of different types of active trading firms and an overall substantial amount of open interest.

However, for the development of new products and further growth of the existing illiquid commodity derivative markets, the position limits regime has proven to be a substantial barrier. Fast growing markets in particular have suffered from an increasingly restrictive standard limit of 2,500 lots as open interest in a market classified as illiquid increases. They have also suffered from an inflexible treatment in terms of their categorisation under the position limits framework and from an inaccurate reflection of the underlying physical markets. Coupled with an immediate availability of OTC or third-country venue commodity derivatives as well as cumbersome regulatory requirements for exchange traded derivatives, there is a serious risk of contracts moving from EU trading venues into the OTC space and to other jurisdictions. Large positions are being traded over the counter. This can be significant, for example approximately 65% of German Power was traded OTC bilaterally on Trayport in 2018. Further, poorly calibrated position limits in the exchange markets may drive trading into the OTC market where NCAs have limited visibility.

Further, Nasdaq is of the view that the position limit regime is creating a barrier to competition between European exchanges listing electricity derivatives with the same underlying physical market. The “other months limits” represent the entire maturity curve, with limits calculated on each exchange’s calculation of open interest. The result is an individualized position limit, which will be different on each of the competing exchanges, pushing liquidity to the largest exchange and preventing others from building open interest. This is exacerbated by the inconsistency between exchanges and between NCAs in terms of calculating the open interest for the purpose of setting “other months” position limits in electricity contracts. These factors combine to create an artificial cap on further growth in liquid markets for all exchanges, except the one with the highest amount of open interest i.e. the **“**benchmark contracts”.

In addition, the NCAs are taking different approaches to the methodology for calculating open interest, which results in artificial distortions of the market.

As to prevention of market abuse, Nasdaq sees limited value in the regime. Especially noting:

* The relationship between the position limits regime and the market abuse regime: market abuse may occur when only a small position is held; conversely a large position may be held with no market abuse
* The ability of the regime to detect market abuse in the absence of trading data, which is not expressly considered
* How the regime distinguishes between physically delivered products and financially settled derivatives products, given physical markets are more prone to potential market manipulation activity, such as “cornering the market”. This is particularly pertinent given that the regime currently excludes physically settled wholesale energy products traded on an Organised Trading Facilities or other energy products under Annex 1, section C(6) of MiFID II.

When it comes to any limits set by an exchange as part of position monitoring controls it is important to note that each exchange will only see a small proportion of overall positions. Indeed, for some markets, it may not be possible for a market participant in an exchange to build up a dominant position in that venue alone, making any limits imposed by the venue ineffective in achieving the stated purpose of the regime.

Further, exchange position limits might lead persons to reduce positions by end of day to stay compliant, when they otherwise would not have (e.g. because of an offsetting position), which may impact price formation.

Effective position monitoring would hence require information sharing across exchanges, for example through regulatory bodies, clarity over objective criteria to be used consistently across venues and consideration of bilateral markets.

**Therefore, Nasdaq recommends that the following changes are made to the position limit and management regime:**

1. Limiting the regime to a few benchmark contracts. For example in the US, only benchmark products are included in the position limit regime, while the EU regime covers all commodity derivatives traded on EU trading venues regardless of their liquidity profile, size of open interest and underlying market characteristics. Focusing only on a set of benchmark contracts would prevent market abuse and excessive speculation which may negatively impact global retail prices, while allowing new and nascent products to develop.
2. Position limits should be set equally across the full market to create more competitive markets. To achieve this Nasdaq recommends position limits be set either
	1. Starting on benchmark contracts, which would then apply to all exchanges trading contracts with the same underlying, or
	2. Using the same methodology as used for “spot month”, noting that these would need to be adjusted to higher trading activity in derivatives markets in comparison to underlying physical markets.
3. Clarify a common open interest calculation methodology for setting position limits across markets.
4. Market abuse prevention regimes should have MAR as a starting point and additional measures need to be appropriately aligned, not least as regards scope and data availability, to ensure market participants and supervisors can fulfil their roles towards the ultimate intentions of market abuse regimes. Accordingly, trading behaviours need to be incorporated more explicitly in the framework.
5. The focus of the the regime regarding physical vs. financially settled derivatives should be clarified.
6. Furthermore, in order to prevent market squeezes, it would be sufficient to set limits for the period right before expiry rather than covering the entire maturity curve.

For limits to be imposed as part of position management controls, consider implementinginformation sharing and clearer objective criteria applied consistently across venues. The positions management regime operated by exchanges would also benefit from coordination between exchanges and NCAs for exchanges listing derivatives with identical underlying physical market.<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>

Nasdaq is of the view that the position limits regime is creating negative consequences for developing more liquid and more integrated European commodity derivatives markets. This concerns both markets which are less liquid and those which have developed too already be liquid.

Nasdaq will focus first on the well-developed and highly competitive European electricity markets classified as “liquid”. We argue that the current position limit set for “other months” according to RTS 21 Art 11.1 has negatively impacted competition between European exchanges listing electricity derivatives with the same underlying physical market. The regime has created a methodology for setting “other month” position limits that benefits the venues where the benchmark contract is provided.

The methodology for setting the standard spot month limit according to Art 9.1 is straight forward and does not differentiate between exchanges and liquidity. The limit is set by calculating 25% of the deliverable supply of that commodity derivative. The spot month contract has no liquidity as it is in delivery.

In contrast, the standard methodology for setting other month limits, according to Art 11.1, is set by calculating 25% of open interest on each exchange, and hence results in differentiated position limits for each exchange. The exchange with the highest open interest will always have the highest position limit in “other months” which represents the entire maturity curve and thereby all liquidity for the exchanges.

Due to lower open interest on a second or third largest exchanges, the position limit will be set much lower on these venues under the current methodology. The liquidity on these smaller exchanges cannot increase without sufficient increase in open interest. However, traders and market makers will look to trade on the largest market, due to the lower risk of breaching the position limit. This results in a reduction in liquidity in smaller venues. In other words, the current methodology pushes the liquidity to the largest exchange in a given electricity commodity effectively, preventing other venues from building open interest. This reduces the options available to market participants.

**Example: EEX and Nasdaq position limits in Nordic and German markets**

Below is a practical example for the position limits set for the Nordic and German electricity markets, which are both considered as “liquid markets”. Nordic electricity contracts listed on Nasdaq are the benchmark contracts for the Nordic electricity market. The German electricity contracts listed on EEX are the benchmark contracts for the German electricity market.

**Fig 1: Nasdaq: Position limits for Nasdaq (updated per January 16, 2019, set by the Norwegian NCA) and EEX (updated April 1, 2019, set by the German NCA), MWh lots**

|  |  |  |  |
| --- | --- | --- | --- |
|  | Nasdaq |  | EEX |
| Derivatives  | Position Limit Spot Month | Position Limit other months  | Other month / spot month | Position Limit Spot Month | Position Limit other months  | Other month / spot month |
| Nordic base load  | 19 308 181 (25%) | 67 610 330 (25%) | 3.5x | N/A (illiquid) | N/A (illiquid) | N/A |
| German base load DE/AT  | 43 362 000(25%) | 4 277 271 (50%) | 0.1x | 46 000 381 | 825 447 708 | 17.9x |
| German base load DE | 38 903 282(25%) | 10 618 098(50%) | 0.27x | 40 416 961 | 209 747 820 | 5.2x |

First note that the spot month limits for German base load DE/AT and DE are similar for both venues. However, the position limit on other months is almost 200 times larger for DE/AT and 20 timer larger for DE on EEX compared to on Nasdaq, when EEX is the venue listing the benchmark contracts. The position limits for German DE other months in relation to the underlying physical market is 39% (210 TWh/540 TWh) on EEX compared to 2% for Nasdaq (11 TWh/540 TWh). The German DE/AT is even higher, 138%, in relation to the physical market (825/600 TWh).

Some of the striking differences may be driven by different open interest methodologies used for calculating the other month open interest. However, this is difficult to fully assess given lack of transparency on different calculations methodologies used across venues and regulators (see question 20).

Nasdaq open interest methodology is based on netted position data but if Nasdaq’s open interest was calculated using a methodology based on gross transaction data , we estimate the other month limit could be much higer than the current limit. The market participants trading in smaller exchanges (such as Nasdaq’s market in German instruments) may struggle to comply with the position limit on the instruments traded on the non-benchmark exchange, while market participants trading in the benchmark contracts on the exchange listing the benchmark contracts do not come near the limit, despite trading on a derivative with the same underlying commodity.

Further, for the Nordic electricity market, the other months position limit is 3,5 times than the position limit on spot month, which aligns to expectations given the number of months included in other months. In contrast, the German DE electricity market other months position limit, which represent 66 months, is 0,27 times the spot month limit. Thus, the position limit for the Nasdaq German DE spot month is 242 times higher than for each of the other 66 German months listed.

To remove barriers to competition we believehe same position limits should be set on all venues listing derivatives products with the same underlying physical market as for the spot month.<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>

Nasdaq has observed growth in bilateral trading since the introduction of the MiFID II position limit regime. This has, in part, been driven by the view that bilateral trading is cheaper and less burdensome from a regulatory perspective, including being largely out of scope of the position limit regime.

Several of the major utilities now offer physical bilateral trading services to their large-scale customers via proprietary electronic platforms. This is especially true within local price areas where a handful of utilities may be dominant. As an example, Nasdaq’s member base has been reduced by ~100 in response to EMIR and MiFID Regulatory packages, including position limits. This can be directly attributed to mid-tier fundamental players switching from exchange trading to bilateral trading arrangements with the major utilities. As this volume represents hedging with physical delivery, and as such are exempt from position limits, the impact on liquidity in the regulated derivatives markets is significant.

We would caution against any regulatory requirement which pushes greater activity into bilateral markets, which are excluded from the disciplines of independent price validation, post-trade publication, oversight and central clearing, thereby reducing the transparency and reducing mitigation of systemic risk.<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>

Nasdaq is of the opinion that a properly calibrated position management regime can play an important role in preventing market abuse, particularly for physical delivered products that are more prone to cornering. However, Nasdaq believes that the purpose of the regime alongside the existing market abuse regime is unclear. As such Nasdaq does not consider the MiFID II position limits regime to have contributed to preventing market abuse in trading financially settled electricity derivatives on its platforms. Rather, this has been achieved by Nasdaq’s pre-existing regime for supervision and surveillance systems under MAR.

Firstly, market abuse can occur regardless of the position being held e.g. a participant may abuse the market with only a small position; and a large position may be held with no market abuse. Nasdaq acknowledges that position limits may cap the financial gain a participant could make from market abuse, but this is largely the case in the physical delivered markets. We would therefore argue that position size as an indicator on its own is less relevant in financially settled derivative products.

Further it is important to monitor the trading behaviour, together with position size, to identify and prevent market abuse. This is currently not part of the position limit regime, but is considered under MAR which includes several elements related to the trading behaviour and contributes to preventing market abuse.

We recommend more clearly aligning the regime to MAR and acknowledging the differences in physical vs. financially settled markets to clarify how the regime works to achieve prevention of market abuse. The role of pre-exisiting market oversight systems should also be considered.

We address further comments under question 7.<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>

One of the stated intensions of the regime is to ensure convergence between prices of derivatives in the delivery month and spot prices for the underlying commodity. This is relevant only for the spot month derivatives and not for the other month derivatives. The other month derivatives provide tools for long term hedging against the price volatility derived from the short-term physical Day-Ahead market.

For other months, position limits, particularly if they are poorly calibrated, might lead participants to reduce positions by the end of day to stay compliant, which may impact price formation away form where the market price would otherwise be.<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>

Nasdaq is of the view that position limits have a narrow view, in that they do not consider OTC traded products, and exclude ~50% of the electricity and natural gas markets because of the regulatory carve out.

Bilateral markets can be significant, for example within German power Trayport estimates ~65% of the market is conducted as physical delivered OTC bilateral contracts(see below).

**Figure [3]: Estimated market shares in German Power, YTD 2018 (Trayport Euro Commodities Report, Dec 2018)**



Please also see the response to Q7 for further details.

<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>

As described under question 9 below, Nasdaq has not yet implemented provisions that would require persons to terminate or reduce positions, or to provide liquidity back to the market. If implemented, Nasdaq is of the view that the requirements could have a positive impact in the short term by increasing liquidity where there is a large position being held. However in the longer term it may have an adverse effect, particularly if there is uncertainty around the conditions by which an exchange may impose position restrictions. This could potentially lead participants to trade on other markets, or indeed bilaterally, which would place these positions outside the scope of the regime. As previously noted Nasdaq has already observed a shift in trading of electricity derivatives away from regulated markets towards OTC trading in recent years.

To be transparent and fair to market participants, Nasdaq is of the view that exchange limits should only be implemented on very clear and transparent grounds, i.e. where a set limit is breached, with clear escalation levels and investigation up to this point. Clear objective criteria applied across venues would provide greater transparency to participants and guidance for venues.

Because markets are fragmented, with trading taking place across multiple venues, Nasdaq will only see a small proportion of overall positions, and hence any position restrictions set by the exchange would not be able to consider equivalent contracts. A large position in Nasdaq’s market may be small overall or offset elsewhere. Hence position controls set by individual exchanges may create uncertainty for market participants and have an adverse impact on liquidity over time. Where an exchange’s overall share is small, then exchange position controls are not contributing to achieving the stated purpose of the regime. For example, a market participant trading German Power on Nadsaq’s exchange would not be able to build up a position of dominance in our market alone, where we estimate we have a ~2% market share.

The regulator is in a better position to assess overall positions, and even this requires information sharing and coordination at European level to consider positions held across multiple jurisdictions.<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>

Nasdaq is of the view that the regime should distinguish between physically delivered products and financially settled derivatives products, given that physical products are more likely to be impacted by cornering.

For financially settled derivatives products Nasdaq believes that the regime, on a standalone basis, does not clearly contribute to the prevention or detection of market abuse.

Importantly market abuse can occur even with small positions that would not be picked up by the position management controls regime. A large position in itself is also not indicative of market abuse.

Thus, while positions may be a useful signal for identifying potential market abuse, particularly for physical delivered products, the regime is insufficient, in that a conclusion that market abuse has taken place should consider trading behaviour, as per MAR, and must fit with the MAR definition regarding misleading signals around price and volume. MIFID II on the other hand does not explicitly bring in other elements as part of the review and hence it is not clear the extent to which they should be considered.

In addition, because OTC markets are not captured by the regime, and an exchange cannot see all exchange traded positions, the totality of market positions cannot be considered, hence a position on a single exchange, or indeed across all exchanges may not be dominant overall. Bilateral trading in European Power has grown over the past five years. For example, Nasdaq estimates that the share of bilateral Nordic electricity activity has increased from 3-5% to 12-15% of the market over the past 5 years. Similarly, the German bilateral market share has grown from ~ 50% in 2013 to ~ 66% YTD 2018.

The ability of the regime to prevent market abuse is also hindered by the exclusion of bilateral products with the same underlying physical market as exchange listed electricity derivatives products. We estimate that approximately 50% of the products representing the same underlying physical market are excluded from the position limit and management regime. Exchanges do not have visibility of bilateral contracts and therefore are not able to detect a potential market abuse situation involving bilateral activity.

Given that the existing provisions under MAR are more comprehensive, Nasdaq proposes the regime be aligned with, or included under MAR. Accordingly, Nasdaq’s pre-existing market supervision and surveillance systems are already contributing to preventing market abuse.

<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>

No. Nasdaq is of the view that adopting exchange position controls might lead participants to reduce positions by the end of the day to stay compliant, which may impact price formation away from where the market price would otherwise be. This is of concern given that a single exchange sees only part of the total positions held in the market.<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>

Under MIFID II trading venues should have powers to:

1. Monitor open interest positions of persons
2. Access information from persons about the size and purpose of a position or exposure entered into, information about beneficial or underlying owners, any concert arrangements, and any related assets or liabilities in the underlying market
3. Require a person to terminate or reduce a position, on a temporary or permanent basis as the specific case may require and to unilaterally take appropriate action to ensure the termination or reduction if the person does not comply and
4. Where appropriate, require a person to provide liquidity back into the market at an agreed price and volume on a temporary basis

Nasdaq has implemented requirements A&B above. To satisfy requirement A Nasdaq is monitoring end user (client level) positions. These are analysed per product, in absolute and relative numbers, point in time and over time periods and considering the purpose of the positions (e.g. if risk reducing or not). Requirement B is met where there is a position deemed to warrant further investigation, at which point the information regarding position size and trends can be complemented with further information regarding typical trading behaviours, trading volume, purpose of the trading activity etc.

Nasdaq has not yet implemented requirements C&D above, given

* Exchange limits on markets where Nasdaq has a small market share overall e.g. German Power, will not contribute to identification of large and dominant positions and hence will not assist in achieving the state purposes of the regime
* We believe that each exchange has insufficient information regarding offsetting positions to impose own controls
* Insufficient clarity has been provided regarding the basis against which to calculate and set thresholds and demand termination or reduction of a position, or demand liquidity be provided back to the market

We believe that implementing limits at this point might have an adverse impact on liquidity by creating uncertainty and driving trading into the bilateral markets.

Positions are also considered separately as an input into Nasdaq’s existing monitoring framework around market abuse.

<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>

The commodities derivatives markets in the UK and in EU27 will remain closely interlinked after Brexit. Nasdaq, like any market participants, has long been preparing for Brexit and we deem the market to be as prepared as can be under uncertain circumstances. We expect the market to cope as best possible, although certain disruptions may well occur.

In case any type equivalence is considered regarding the UK, we urge such decisions to be taken after transparent processes, involving not only relevant EU institutions but also national authorities as well as market participants. National authorities and market participants are closer to the market and it will be important to include their expertise and observations in equivalence considerations. We insist equivalence decisions be taken based on objective and technical criteria.

After potential equivalence decisions, market participants in the UK and in EU27 will be competing on similar terms, which means EU and UK authorities need close cooperation on implementation and enforcement of EU rules. We suggest a mechanism is established to facilitate swift solutions to issues which will undoubtledly arise. Such a mechanism should, in addition to EU institutions/authorities also involve market participants and national authorities, who will discover problems first, and who will also be able to contribute with proposed solutions. It is important that such a mechanism can operate quickly, in order to as much as possible support the maintaining of a level playing field.

Cooperation between EU and UK authorities specifically need to address data – availability and use – for various types of calculations.

<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>

As stated previously we believe that the impact of the regime on preventing market abuse is greater for physically delivered products, as opposed to financially settled derivative products.<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>

Yes. To avoid hindering the development of “liquid markets” and to allow competition between trading venues, we propose to change the methodology to concentrate the position limit regime to a limited number of benchmark contracts. The same position limits should be set on all venues listing derivatives products with the same underlying physical market as for the spot month.

One of the key ambitions of the regulation is to ensure, in particular for the underlying commodity, that there is no prejudice to price discovery on the market for the underlying market. To achieve this purpose small differences in the products traded on different venues are not relevant. This is observed in the spot month, where the standard limit is set on 25% of the deliverable supply. Accordingly, for other months, we would argue that products based on the same underlying should not be treated differently, given that they may have an influence on price discovery for the same underlying.

<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>

TYPE YOUR TEXT HERE

<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>

No. Nasdaq believes the key objectives of introducing that concept have been achieved with the current definition. <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>

Nasdaq is of the view that existing hedging exemptions are appropriate. Given that position limits and position monitoring controls are applied a the end user level, we do not see a need to adjust the definition of hedging under RTS 20 to enable trades for hedging purposes to be conducted by financial institutions for smaller commercial players.

<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>

 Yes, but only adjusting the percentage of the physical underlying market.

<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. Considering the negative impacts that the MiFID II position limits regime has had on the proper functioning and further development of nascent commodity derivatives markets as well as the competitive position of European trading venues, we believe that changes thereto are urgently required.

Position limits should only be imposed on key benchmark contracts which are crucial to orderly functioning of their respective commodity markets. This is because the price formation mainly occurs in such benchmark products. Other commodity derivatives contracts follow benchmarks in terms of price formation and thus should not be subject to limits.

Hence, new and illiquid and less liquid contracts (i.e. those with open interest below twenty thousand lots) should not be subject to position limits. New and nascent products normally constitute a minor share of commodity markets. Such contracts are unlikely to influence price movements in the underlying physical commodity markets that could negatively impact consumers.

It is worth noting that even in the absence of position limits, these contracts would remain subject to internal position monitoring and management by the trading venues and market surveillance procedures aimed at preventing abuse. Thus, the removal of position limits for such contracts would not pose any risk to the transparency and functioning thereof. Rather, attracting more volume to regulated venues would contribute to a more transparent trading environment.

<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>

Nasdaq responded and fully supported the intention with the recent ESMA “Open Interest Methodology Survey” in March 2019 to ensure and maintain an equal application of the position limit regime for all exchanges.

We do not argue that one methodology is more appropriate than the other, as we believe ESMA and the NCAs will ensure that the same open interest methodology is applied across all exchanges. This would allow all venues and market participants to operate in a fair and competitive landscape where the position limit regime is not creating an unleveled playing field. <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>

Nasdaq would also appreciate clearer guidance on the objective criteria governing under what circumstances a member would be required to reduce positions and / or provide liquidity back to the market.

<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>

As previously mentioned we see value in aligning the regime with MAR and considering the role that existing market supervision and surveillance have in preventing market abuse and ensuring orderly trading and settlement.

ESMA should also consider whether requirements regarding monitoring should be considered separately from requirements relating to members reducing positions and/or providing liquidity back to the market. Objective criteria and information sharing across exchanges would support the latter.<ESMA\_QUESTION\_PLPM\_22>