14 September 2023
ESMA74-1865191303-15385

OPINION on position limits on Fish Pool Farmed Salmon contract

I. Introduction and legal basis

1. On 30 August 2023, the European Securities and Markets Authority ("ESMA") considered that sufficient information was received to assess a notification received from the Norwegian Finanstilsynet ("Finanstillsynet") under Article 57(5) of Directive 2014/65/EU on markets in financial instruments[1] ("MiFID II").

2. The notification relates to the exact position limits Finanstillsynet intends to set for the Farmed Salmon commodity contract in accordance with the methodology for calculation established in Commission Delegated Regulation (EU) 2022/1310[2] ("RTS 21a") and taking into account the factors referred to in Article 57(3) of MiFID II.

3. ESMA's competence to deliver an opinion on the position limits that competent authorities intend to set is based on Article 57(5) of MiFID II.

4. On 2 September 2020, ESMA already issued an Opinion regarding the exact position limits that Finanstillsynet intended to set for the Farmed Salmon commodity contract. The position limits considered by the Finanstillsynet in September 2020 were 23,400 lots for the spot month and 20,800 lots for the other months'. ESMA concluded that those position limits complied with the methodology established in Commission Delegated Regulation (EU) No 2017/591[3] (RTS 21) and were consistent with the objectives of Article 57 of MiFID II.

5. Finanstillsynet reviewed these limits in light of the change in methodology for calculating position limits following the entry into force of RTS 21a. As a consequence, in this opinion, ESMA is assessing whether the new position limits notified by Finanstillsynet for the Farmed Salmon commodity contracts comply with the methodology established in RTS 21a and are consistent with the objectives of Article 57 of MiFID II. ESMA understands that the new position limits will apply three weeks after the publication of this opinion.

6. In accordance with Article 44(1) of Regulation (EU) 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority

[1] Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).
[2] Commission Delegated Regulation (EU) 2022/1302 of 20 April 2022 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the application of position limits to commodity derivatives and procedures for applying for exemption from position limits (OJ L 197, 26.07.2022, p.52)
[3] Commission Delegated Regulation (EU) 2017/591 of 1.12.2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the application of position limits commodity derivatives (OJ L 87, 31.3.2017, p. 479).

(European Securities and Markets Authority)[4] ("ESMA Regulation"), the Board of Supervisors has adopted this opinion.

II. Contract classification

Commodity base product: Agricultural (AGRI)

Commodity sub product: Seafood (SEAF)

Commodity further sub product: Not available (NA)

Name of trading venue: FISH POOL ASA

MIC: FISH

Venue product code : FPSA

III. Market description by the competent authority

Supply of the commodity:

7. The production of farmed Atlantic salmon takes place in pens along the coastline of Norway, Chile, Scotland, Faroe Islands, Ireland and Canada. Norway is by far the largest producer with more than twice the production of the second largest country, Chile. The production of salmon, including harvest volume, is only restricted by the number of production permits in each salmon producing country.

8. The global farmed salmon production is more than 2 million tons per year. In order to gain a control over the production, one would have to purchase fish farming companies that own substantial parts of the production permits. Also, bearing in mind the lifecycle of salmon production, fish farming companies would have to plan at least two years in advance in order to constrain the availability of salmon.

9. Salmon harvested too early is not large enough for the processing industry, while salmon harvested too late is too large and more exposed to diseases. If one wants to limit availability in a period, this must be planned from before the smolt (baby salmon) are hatched.

Methods of transportation and delivery of the physical commodity:

[4] Regulation (EU) 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15. 12.2010, p. 84).

10. Salmon is exported throughout the globe by truck, airplane or by container ships. There are a vast number of receiving companies around the world. Most purchasers of salmon are in Europe and in the United States. A purchaser of salmon can purchase a full load (one truck or one container) or a part load.

11. There is no storage of fresh Atlantic salmon. Warehousing is therefore not used and is not an issue in this market. The logistics are also well developed and it is easy to deliver the exact number of boxes to each customer. There are no capacity constraints of a delivery point in the salmon market.

Market participants, including structure, organisation and the operation of the market:

12. The international physical farmed salmon market has a large number of market participants; producers (fish farming companies), exporters, processors and retailers selling salmon to the end consumer. The market participants are separated in two main groups:

- The producers of salmon i.e., fish farmers;
- Those earning a margin from exporting/importing, processing or selling the product to processors/consumers.

13. Fish farmers produce the salmon and export the commodity themselves or through an independent exporter. Most salmon is sold "head on gutted" (HOG) and later on processed to a consumer ready product outside the country where the salmon was farmed. Some companies are vertically integrated with an organization supporting all parts of the value chain.

14. Regarding seasonality in the farmed salmon market, the volume tends to increase gradually throughout the year due to biological factors such as water temperature and hours of daylight.

Macroeconomic or related factors influencing operation of the underlying market:

15. The salmon market is an international market and is influenced by currency fluctuations. The market is especially influenced by the currency development of EUR/NOK and USD/EUR.

Characteristics, physical properties and lifecycles of the underlying commodity:

16. The lifecycle of salmon begins in fresh water. When the small fish has reached at least 60 grams, it is ready for salt water (this takes about one year). Some fish farmers keep the salmon on shore for a longer period to limit the time in sea. After about one and a half years

in the sea, the salmon is 4.5 to 5.5 kg and ready to be harvested, sold, exported and processed.

17. When a salmon is harvested, it is characterized by its size and divided into three different quality categories: superior, ordinary and production. Size 3-6 kg of superior quality, HOG, is the main product.

Salmon derivative market:

18. The farmed salmon contract is cash settled. Settlement is based on the Fish Pool Index (FPI). The Fish Pool Index represents the weekly spot price for fresh Atlantic superior salmon, HOG, 3-6kg, and is composed by the following indices:

- Nasdaq Salmon Index - 95%: Norwegian exporters sales price of fresh Atlantic superior salmon, HOG, 3-6kg.

- Statistics Norway customs statistics (SSB) – 5%: Norwegian export statistics for fresh Atlantic salmon.

19. The underlying commodity qualifies as food for human consumption.

20. The derivative contracts are monthly contracts with up to 36 monthly contracts available for trading, i.e. maximum maturity is 3 years. Trading in the contract takes place in lots where one lot equals 1 Metric Tonne (MT).

21. The market participants in the salmon derivative market are mainly European fundamental players, such as fish farmers, fish exporters and processors. The salmon market is an international market and is influenced by currency fluctuations.

22. There is significant open interest in Farmed salmon economically equivalent OTC contracts.

IV. Proposed limit and rationale by the competent authority

Spot month position limit

Deliverable supply

23. Deliverable supply amounts to 119,023 lots, i.e., 119,023 metric tonnes (MT).

24. The Norwegian Seafood Council (NSC)[5] has been used as a data source for calculating the deliverable supply.

25. NSC is a public company owned by the Ministry of Trade, Industry and Fisheries. The Council also acts as an advisor for the Ministry of Trade, Industry and Fisheries in affairs concerning seafood export and trade. The data used to calculate the deliverable supply is the export volume of salmon produced in Norway from 1 June 2022 to 31 May 2023, converted to whole fish equivalent ("wfe"). According to NSC, the total export of Norwegian salmon over that period was 1,428,277 MT which equals to 119,023 MT per month (annual figure divided by 12). Each lot is 1 MT according to the contract specification, therefore the deliverable supply equals 119,023 lots.

<u>Spot month position limit</u>

26. The spot month definition includes 30 calendar days.

27. The spot month limit is 5,951 lots, which represents 5% of deliverable supply.

<u>Spot month position limit rationale</u>

28. Pursuant to Article 11(1) of RTS 21a, the baseline figure for the spot month limit in an agricultural commodity derivative is set at 25% of the deliverable supply.

29. Under Article 20(2)(b) of RTS 21a, as the number of investment firms acting as market makers in the Farmed Salmon contract at the time the position limit was set was lower than three, the spot month limit can be set between 5% and 50% of the deliverable supply.

30. Finanstillsynet has considered relevant to make a downwards adjustment to the baseline in accordance with Article 19(3) of RTS 21a as the open interest is significantly lower than the deliverable supply.

31. All the other potential adjustment factors set out in RTS 21a have been considered by Finanstillsynet and were not regarded as material or relevant to require adjustments from the baseline.

32. Based on the above, Finanstillsynet has set spot month limit at 5,951 lots which corresponds to 5% of deliverable supply.

<u>Open interest</u>

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[5] NSC use export statistics from Statistics Norway customs statistics (SSB) and the Directorate of Norwegian Customs as their data sources. NSC data: https://sfd-seafood-prod-cdn.azureedge.net/4915a1/globalassets/markedsinnsikt/apne-rapporter/manedsstatistikk/2022/manedsstatistikk-desember-2022.pdf

33. The open interest amounts to 45,251 lots.

34. The open interest is calculated based on position reported data from Fish Pool and investment firms reporting EEOTC contracts. The daily net open interest is calculated by adding up the absolute value of the daily net positions reported at position holder level and dividing them by two. The period used to calculate an average of the net open interest is 1 June 2022 - 31 May 2023, where it appears that the open interest has slightly decreased towards the end of the reference period.

35. The open interest is calculated in lots where one lot equals one MT.

Other months' position limit

36. The other months' limit amounts to 15,837 lots, which represents 35% of the total open interest.

Other months' position limit rationale

37. In accordance with Article 13(1) of RTS 21a, the baseline for the other months' limit is set at 25% of open interest.

38. Under Article 20(2)(b) of RTS 21a, as the number of investment firms acting as market makers in the Farmed Salmon contract at the time of the position limit was set was lower than three, the other months' limit can be set between 5% and 50% of the open interest.

39. Finanstillsynet has considered the following factors relevant for adjusting upwards the baseline in accordance with:

- Article 19(3) of RTS 21a as the open interest is significantly lower than the deliverable supply; and
- Article 20(2)(b) of RTS 21a as there were fewer than three investment firms acting as market makers in the Farmed Salmon contract at the time of the position limit was set.

40. All the other potential adjustment factors set out in RTS 21a have been considered by the Finanstillsynet and were not regarded as material or relevant to require further adjustments from the baseline.

41. Based on the above, Finanstilsynet has set the other months' limit at 15,837 lots which corresponds to 35% of the total open interest.

V. ESMA's assessment

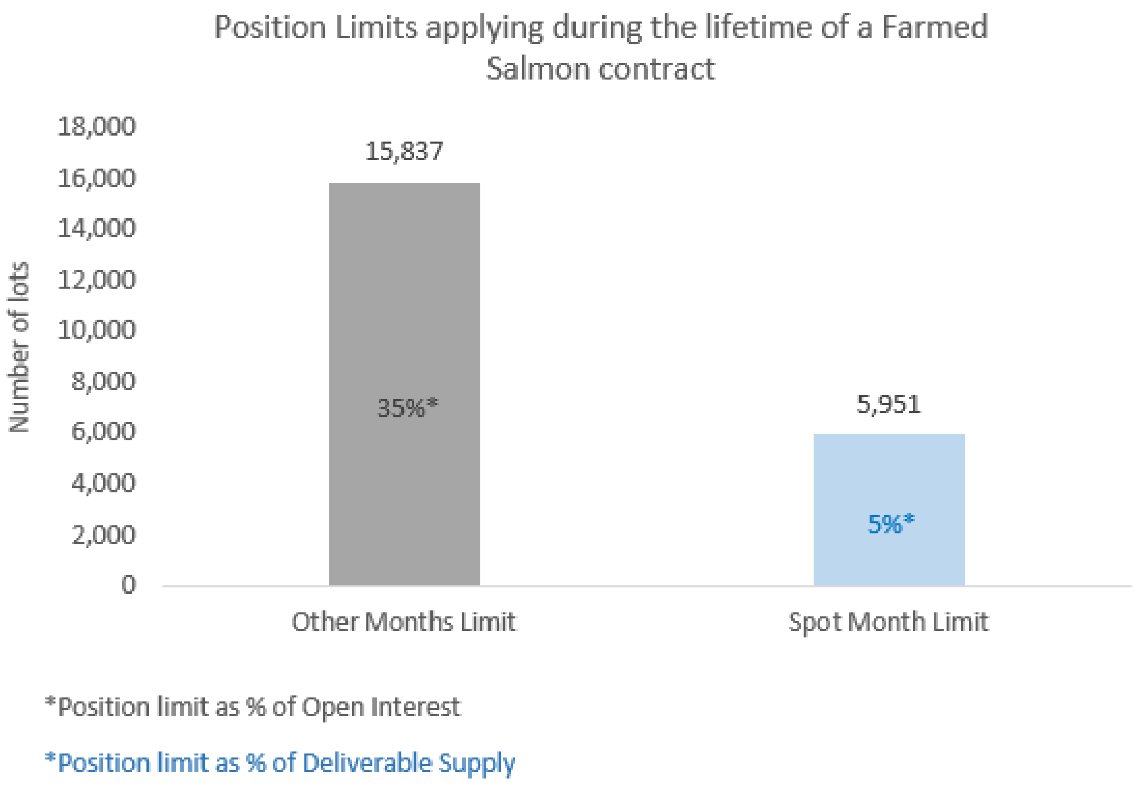
42. This Opinion concerns positions held in Farmed Salmon contracts.

43. ESMA has performed the assessment based on the information provided by Finanstilsynet.

44. For the purposes of this Opinion ESMA has assessed the compatibility of the new position limits Finanstilsynet intends to set according to Article 57(4) of MiFID II with the objectives of Article 57(1) of MiFID II and with the methodology for calculation of position limits established in RTS 21a, in accordance with Article 57(3) of MiFID II.

Compatibility with the methodology for calculation of position limits established in RTS 21a in accordance with Article 57(3) of MiFID II

45. Finanstilsynet has set one position limit for the spot month and one position limit for the other months.



<u>Spot month position limit</u>

46. The calculation of the deliverable supply is based on average monthly data of export volume of salmon produced in Norway over 1 June 2022 – 31 May 2023. The calculation of deliverable supply is consistent with Article 12(2)(b) of RTS 21a that sets out that "Competent authorities shall determine the deliverable supply (…) by reference to (…); (b)

a one to five-year period immediately preceding the determination for an agricultural commodity derivative".

47. Compared to the baseline of 25% of deliverable supply for agricultural commodity derivatives with an underlying that qualifies as food intended for human consumption and an open interest below 50,000 lots, the spot month limit has been adjusted downwards as the open interest is significantly lower than the deliverable supply. ESMA agrees that this downward adjustment to the baseline is justified under Article 19(3) of RTS 21a.

Other months' position limits

48. The open interest has been calculated by Finanstilsynet based on position reporting data. The daily net open interest has been calculated by adding up the absolute value of the daily net positions reported at position holder level and dividing them by two. ESMA considers such aggregation sensible, as the contracts will be covered by the same limits. The daily average open interest has been calculated over one year, from 1 June 2022 until 31 May 2023. ESMA considers that such calculation of open interest by the competent authority provides an accurate and reliable figure and promotes convergence in the setting of position limits by competent authorities. ESMA also considers such approach consistent with Article 14 of RTS 21a.

49. The baseline figure for the other months' limit of 25% of open interest has been adjusted upwards to take into consideration that open interest is significantly lower than deliverable supply. This is consistent with Article 19(3) of RTS 21a.

50. The other months' limit has been further adjusted upwards as there were fewer than three investment firms acting as market makers at the time of the position limit was set. ESMA also considers that this upward adjustment is consistent with Article 20(2)(b) of RTS 21a.

51. Consequently, these position limits have been set following the methodology established by RTS 21a.

Compatibility with the objectives of Article 57(1) of MiFID II

52. ESMA has found no evidence indicating that the proposed position limits are not consistent with the objectives of preventing market abuse and supporting orderly pricing and settlement conditions established in Article 57(1) MiFID II.

53. Overall, the position limits set for the spot month and the other months appear to achieve a reasonable balance between the need to prevent market abuse and to ensure an orderly market and orderly settlement, while ensuring that the development of commercial

activities in the underlying market and the liquidity of the Farmed Salmon commodity contracts are not hampered.

54. ESMA however notes that the open interest in the Farmed Salmon contract has started to slightly decrease towards the end of the reference period. ESMA therefore invites Finanstilsynet to closely monitor developments in the Farmed Salmon contract and, in case of any relevant changes to market fundamentals, to promptly notify ESMA of revised position limits.

VI. Conclusion

55. Based on all the considerations and analysis presented above, it is ESMA's opinion that the spot month position limit complies with the methodology established in RTS 21a and is consistent with the objectives of Article 57 of MiFID II. The other months' position limit also complies with the methodology established in RTS 21a and is consistent with the objectives of Article 57 of MiFID II.

Done at Paris, 8 September 2023

Verena Ross

Chair

For the Board of Supervisors