

**Submission Date**

23/09/2022

# ESMA\_QA\_1277

Status: Answer Published

## **Additional Information**

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### **Level 1 Regulation**

Markets in Financial Instruments Directive II (MiFID II) Directive 2014/65/EU- Secondary Markets

### **Topic**

Position reporting

### **Subject Matter**

Various underlyings listed in Annex I, Section C(10) of MIFID II?

### **Question**

How is the position limits regime applied to the various underlyings listed in Annex I, Section C(10) of MIFID II?

23-09-2022

Original language

[ESMA70-872942901-36 Commodity derivatives, Position limits Q&A 10]

Section C(10) of Annex I of MiFID II covers a number of different types of commodity derivatives. For these instruments the following approaches should be taken:

Position limits should be applied to freight rate derivatives (wet and dry freight) based on the open interest both in the spot month and in the other months when the freight rate derivative contract qualifies as critical or significant under Article 57(1) of MiFID II.

Position limits should be applied to derivative contracts relating to indices qualifying as critical or significant under Article 57(1) of MiFID II if the underlying index is materially based on commodity underlyings as defined in Article 2 No. 6 of Commission Delegated Regulation (EU) 2017/565 of 25 April 2016. ESMA considers that the underlying index is materially based on commodities if such commodities have a weighting of more than 50% in the composition of the underlying index. The spot and the other months' limits should be based on open interest only, in accordance with Article 15(1) of RTS 21a, as no single measurable deliverable supply can be determined for the commodities contained within the index.

A commodity derivative contract in the legal form of a "spread" or "diff" contract is a contract that is cash-settled and whose value is determined by the difference between two reference commodities which may vary in type, grade, location, time of delivery, or other features. The application of the regime regarding these contracts is dealt with specifically in Q&A 1282.

For other derivatives listed in Section C10 of Annex I of MiFID II and in Article 8 of Commission Delegated Regulation (EU) 2017/565 of 25 April 2016, ESMA is not expecting the setting of any position limits as the underlyings of such derivatives are not considered to be commodities as defined in Article 2 No. 6 of Commission Delegated Regulation (EU) 2017/565 of 25 April 2016.