|  |
| --- |
| 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\_INVIVO TRADING\_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 | INVIVO TRADING |
| Activity | Non-financial counterparty |
| Are you representing an association? |  |
| Country/Region | France |

**Introduction**

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

<ESMA\_COMMENT\_PLPM\_1>

InVivo Trading is the union of French Cooperatives, active in agri-commodities markets and is happy to respond to this consultation by ESMA.

As a reminder, InVivo Trading wants to point that the use of derivatives in EU agri markets is a recent development, and that these contracts represent a minor portion of the traded volumes worldwide in this asset class…

<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>

InVivo Trading cannot identify any significant impact on liquidity of the derivative markets due to the introduction of position limits by Mifid II.

Liquidity is, among other factors, a function of the hedging needs, themselves depending, also among others, on the volatility of the markets. These last five years, agri-commodities in general, have seen quite low prices and low volatility, because of global fundamental situation. The grain and oilseeds supply side of the equation was comfortable enough to meet the global increase of the demand side. The ample supply has led to a steady increase of the open interest in most of agri commodities, comforting the fact that agris markets remain liquid with less volatility.

<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>

The recently observed disengagement of certain financial participants from agri-derivatives markets cannot be linked to the introduction of position limits, but rather to the lack of volatility.

Indeed, some companies acting as first buyers from producers have merged, but this does not reduce the hedging needs, since worldwide production itself is steadily increasing.

<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>

Answer to questions 3 /4 /5 : InVivo Trading could not identify any case of market abuse for Agri markets since the introduction of position limits by Mifid II. Generally speaking, the level of transparency in the markets has increased, which we are happy with, and we cannot find any evidence of a market participant having a dominant position in the market, leading to a potential risk of market abuse, either on orderly pricing or settlement.

<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>

TYPE YOUR TEXT HERE

<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>

Answer to Questions 6 / 7 / 8 Like ESMA, InVivo Trading cannot find any negative impact of position management controls on the agri-commodities markets liquidity.

Even if it is difficult for physical market participants to detect any unfair practice or market abuse, these processes, by increasing market transparency, are beneficial to the market. Talking about grains and oilseeds, InVivo Trading recognizes positively the many number of actions taken by Euronext, for securing the delivery processes, particularly during the last days before expiry, because they ensure even more efficiently prices convergence. This increase the participants’ confidence in the markets and secure prices convergence.

<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>

TYPE YOUR TEXT HERE

<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>

Not relevant for InVivo Trading

<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>

Despite a serious administrative burden for the clearing houses and their clients at the start of implementation, position reporting is now installed in a sort of “routine”, well accepted and monitored by all, and which requires no change in our views.

The Commitment of Traders report by Euronext is a very useful tool for market transparency, from which one can understand that our Agri markets have a strong and solid base of commercial companies using them for their hedging needs.

We can also add that transparency would have been even higher if the market participants definitions were the same between US based CFTC and Esma, as US agri markets are largely dominant in world market prices discovery.

<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>

Brexit is certainly a major challenge for Agri commodities markets, since roughly 2/3 of the volumes (notional) are traded in UK, which means that the market size would be divided by 3 after Brexit! But it is even more impacting on other asset classes…

UK has declared they would still apply Mifid II after Brexit, (this certainly depending on the Brexit conditions which are unclear at this moment). Thus, in our views, the best solution would be to change nothing in the quantitative approach and redraft the legal aspects of Mifid II to still include UK venues and markets, despite no longer in the EU.

If this is not possible, then a full review of Mifid II seems needed, and not only the position limits aspects, but also the ancillary activity tests…

<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>

Not relevant for InVivo Trading, involved only in Agri-commodities

<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>

The question is a good question for Agri commodities: InVivo Trading considers that there is only one major futures contract in continental EU, ie Euronext wheat. Corn must not be mentioned, and anyhow, this a rather feed oriented contract… Even rapeseed, which is an active and essential contract at EU’s level but of small dimension, does not require a drastic limitation of the position a given market participant can hold, also because almost 70% of EU rapeseed oil production is dedicated to biofuels, and not to food markets.

<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>

not relevant for InVivo Trading

<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>

InVivo Trading does not see a reason to modify the definition of EEOTC contracts. In our views, should we make this definition more flexible, we would face the risk to have cleared OTC switching to non-cleared contracts, which would reduce the market transparency and security.

<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>

So far, the position limits regime for Agri commodities has not shown any difficulty in its practical management by NCA. This means that it has been well tailored to the markets requirements and particularities from the enforcement of MiFid II in January 2018.

Although InVivo Trading recognizes the potential need to better harmonize the limits management processes for different NCA across EU for one given asset class, for Agri commodities, InVivo Trading does not see any reason to change both position limits and the management process by the regulators.

<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>

For the front month limit, in InVivo Trading’s views, the notion of “deliverable supply” is totally adapted to our commodities, since the quality aspects are extremely important for the last trading weeks before expiry, as opposed to other asset classes. The largest the deliverable supply is, the best is the prices convergence. Euronext regime for the last trading days offers the best guarantees for the physical markets, and is also very well accepted by all market participants.

InVivo Trading is not by principle opposed though to have a distinct rationale for other asset classes, if relevant.

For the other months, open interest is definitely the best and easy to monitor indicator, known with precision on a daily basis.

<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>

Answer to questions 18 / 19 : As far as Agri commodities are concerned, InVivo Trading is in favor of excluding new and illiquid contracts of the Mifid II position limits regime, of course, as long as they are new and illiquid… For these contracts, we believe the Euronext rules before expiry are efficient enough to manage a good prices convergence without risk for the markets.

<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>

Nothing to mention.

RTS21 is very well adapted to agri commodities futures markets.

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PLPM\_22>