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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 | Intercontinental Exchange |
| 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>

ICE Futures Europe and ICE Endex (jointly referred to as “ICE” or “the Exchanges”) welcome the opportunity to provide their comments on the functioning of MiFID II position limits regime. The Exchanges are wholly-owned subsidiaries of Intercontinental Exchange, Inc.

ICE Futures Europe was established in 1980 and provides a highly regulated fully electronic marketplace. It has over 300 Members ranging from global investment banks and trading companies to proprietary individual and former floor traders. ICE Futures Europe is a Recognised Investment Exchange, a Recognised Auction Platform, and a Benchmark Administrator under the Financial Services and Markets Act 2000, supervised by the Financial Conduct Authority. ICE Clear Europe Limited provides clearing and settlement services for all of ICE Futures Europe’s contracts.

ICE Endex is the leading energy exchange in continental Europe. It provides liquid European gas and power markets, including the TTF natural gas benchmark, enabling energy firms and financial participants to manage risk. ICE Endex offers a regulated futures and options platform, as well as gas balancing markets and gas storage services. ICE Endex is a regulated market supervised by the Dutch Authority for the Financial Markets (“AFM”).

As a general principle, the Exchanges support the objectives of MiFID II, among other things, to ensure transparency and prevent abuse in commodities markets. ICE actively participated in public consultations on the MiFID II/MiFIR package, including the position limits regime, as well as its implementing legislation and the related regulatory guidance.

Certain key aspects of the position limits regime remain a challenge that urgently needs to be addressed to prevent adverse consequences to the integrity and competitiveness of European commodity derivatives markets. To date, the MiFID II position limits regime has functioned adequately for a number of well-developed, benchmark contracts. However, the regime has proven to be a substantial barrier to the development of new products and growth in the existing illiquid commodity derivative markets. Fast growing markets in particular have suffered from an increasingly restrictive limit as open interest increases and inflexible treatment in terms of their categorization under the position limits framework. This has prevented the development of a number of contracts with global potential, especially in the energy space, thus underimining such initiatives as the European Commission’s “International Role of the Euro”.

Furthermore, whilst the regime includes exemptions for market participants pursuing hedging activity, the definition of hedging as set out in RTS 20 is clear that only non-financial entities can engage in such activity. In consequence, the exemption is not available to investment banks or certain commodity trading houses, which both play a vital role in providing smaller commercial players with access to commodity derivatives markets.

**Therefore, ICE recommends that changes are introduced to the position limits regime as a matter of urgency. In the view of the Exchanges, the most effective design of the regime would be that only benchmark contracts which actually contribute to price formation are subject to limits. Such benchmark contracts should be designated by the relevant National Competent Authorities in consultation with trading venues and subject to an opinion by ESMA. These could include for example all derivatives contracts with commodities for human consumption as underlying or the key energy market benchmarks such as Brent Crude Oil or Gasoil.**

**However, should such a change in the regime’s design not be feasible in the near term, at least the following amendments should be introduced in order to make position limits workable:**

1. **Position limits for small, new and illiquid contracts are removed or suspended in order to allow these contracts to develop and perform their function as risk-management instruments for commodities markets participants.**
2. **The definition of hedging within MiFID II/MiFIR as well as their implementing legislation be reviewed, so that hedging exemptions from position limits are available to all market participants managing their risks through commodity derivatives markets, including financial firms. A position limit regime that permitted any market participant conducting genuine hedging activity to avail itself of a hedging exemption would better reflect the complex structure of these markets and transactions executed thereon.**

<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>

ICE believes that the MiFID II position limits regime has so far been able to function without causing significant market disruption 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 a substantial amount of open interest.

By contrast, the position limits regime has proven to be a substantial barrier to the development of new products and further growth of the existing illiquid commodity derivative markets. Fast growing markets in particular have suffered from (1) an increasingly restrictive limit as open interest increases and (2) inflexible treatment in terms of their categorization under the position limits framework.

1. **Increasingly restrictive standardized limit**

Contracts classed as ‘illiquid’ under the position limits framework receive a standardized limit of 2.500 lots, a highly restrictive limit of 25 percent of open interest when open interest is 10.000 lots. As new or illiquid products approach 10.000 lots of open interest, the position limit requirement forces market participants to decrease their open positions, the open interest returns to a lower level, thereby sealing the illiquid status of the product. This dynamic means that, once the limit is reached, participants withdraw from the market, often switching to another trading venue outside of the MiFID II regime, thereby leaving the regulator no time to adjust the limit upwards.

And whilst in theory, in line with ESMA Q&A on ‘commodity derivative topics’, National Competent Authorities (“NCAs”) can use different derogations for illiquid markets that have an open interest between 5.000 and 10.000 lots, these remain difficult to apply in practice, due to time inflexibility, and are often not sufficient to mitigate the negative impact of disproportionately low position limits.

Moreover, any increase of the limit under the available derogation would need to be substantial in order to provide sufficient relief to market participants close to the limits and prevent restricting trading activity in fast growing new or illiquid products. For example, an increase of a position limit requirement of 500 lots would only have a very limited impact, effectively allowing market participants close to the limit to trade an additional lots equivalent of four Calendar or eight Season contracts.

Furthermore, in relation to newly launched contracts, it is not unusual for only one participant to sit on the buy or sell side of the market. In such cases, even a fifty percent limit is not sufficient to allow the market to mature to a point where more market participants begin participating on both sides of the market.

1. **Inflexible categorization of products and recalibration of position limits**

In order to provide for a workable regime for growth products, NCAs need to be able to implement near instant changes to the categorisation of products and readjust the applicable limits as open interest in a product increases. This need is especially crucial for products that experience strong increases in open interest over a short period of time. Products with relatively low levels of open interest can develop into liquid markets in a matter of weeks or months.

In practice it has proven impossible for NCAs to reclassify products and recalibrate the applicable limits and in a manner that mitigates the negative impact of position limits on the development of fast growing products. Figure 1. illustrates this negative impact on one of ICE’s previously fast growing products, ICE Endex Italian PSV Gas Futures, when it was subjected to the MiFID II position limits regime. The material growth in open interest (area marked in yellow) started in the last month of Q4 2017, but this momentum was severely impaired at the end of 2017 and in early 2018, as market participants anticipated the introduction of the MiFID II position limits regime. Before any reclassification of ICE Endex Italian PSV Gas Futures and subsequent recalibration of the limit might have occurred, there was irrevocable damage to the development of this product. This example is stereotypical of what happens to to fast growing products subjected to the MiFID II position limits regime.

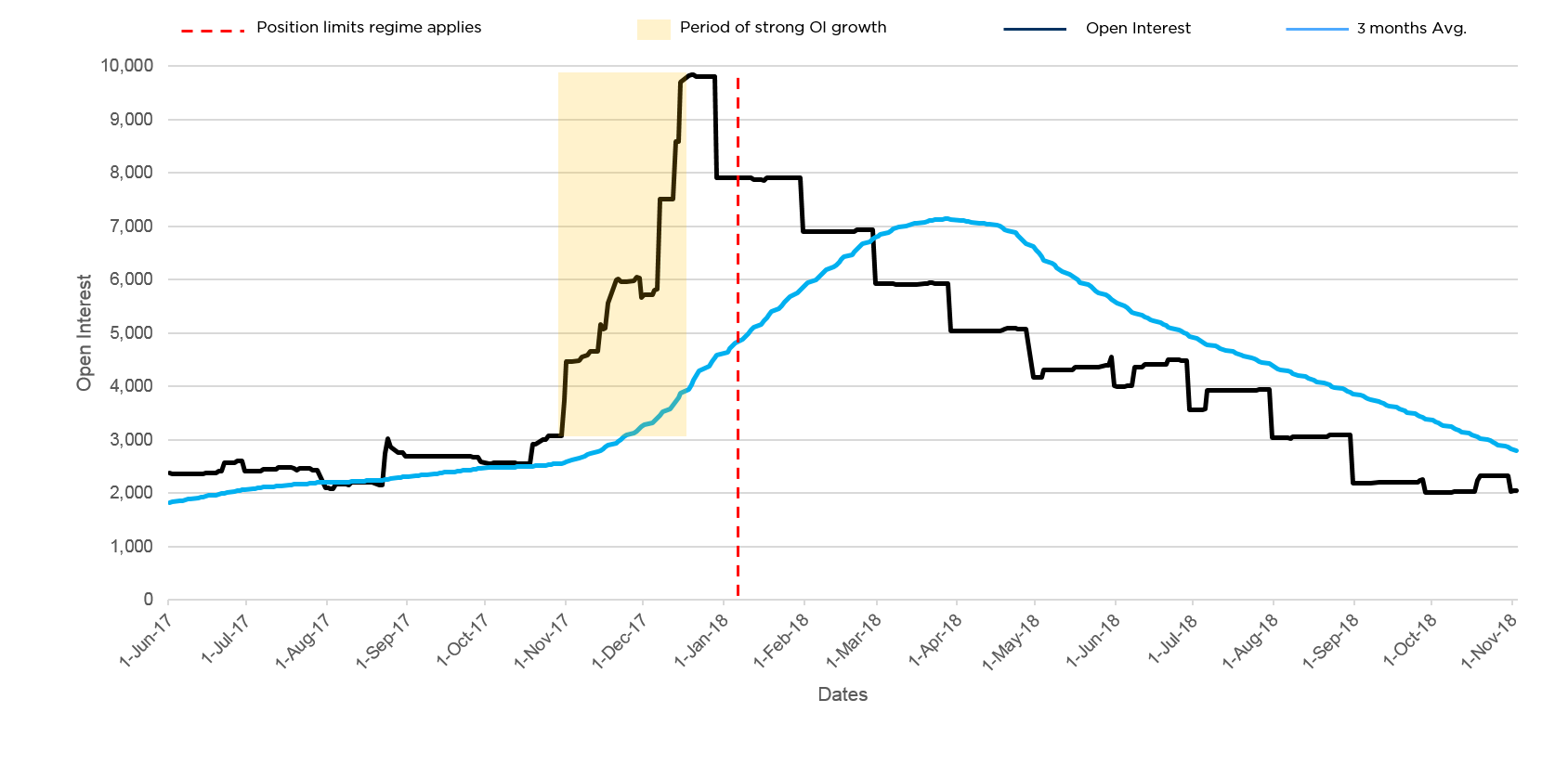


Figure 1. Impact of position limits regime on development of ICE Endex Italian PSV Gas Futures market.

**3) Inaccurate reflection of the underlying physical markets**

For some commodity derivatives, the characteristic of the underlying physical market is such that an effective hedge can only be achieved by holding a position in a specific number of lots. In those cases, such a number cannot be traded without exceeding the limit. Yet, under the current MiFID II provisions, the limit cannot be raised without sufficient increase of the open interest.

For example, the recently launched *ICE Futures Europe TD20 West Africa to UK-Continent (Baltic) Future* has grown significantly over the past few months, reaching over six thousand lots of open interest. The contract is a Suezmax crude route, West Africa to UK Continent for tankers sized on average 130,000 MT (DWT). The largest positions, exceeding 1.9k lots, are held by commodity traders, some of which are located outside the EU and do not hold hedging exemptions. Companies with Suezmax types of tanker fleets tend to hedge calendar years forward and fleet sizes of 20 tankers and above.

To hedge a fleet of ten tankers on a year forward basis - the trade size would be (either as a single trade or done in a sequence of multiple smaller trades for the same Calendar Year tenor, keeping positions open through to expiry):

**130 lots \* 12months \* 10 tankers = 15,600 lots** to hedge freight rates exposure for a single Calendar year (i.e Cal 2019 trade)

With fast growing trading volumes in wet freight, companies are now extending hedges down the curve, trading to cover Cal19 / Cal20 and even Cal21 tenors. The [International Maritime Organization’s environmental regulation going live in 2020](http://www.imo.org/en/mediacentre/hottopics/pages/sulphur-2020.aspx) has been a significant factor behind the longer-dated hedges, as commercial companies are seeking certainty and stability of “locked in” freight levels that are expected to become volatile as the new sulphur caps for bunker fuel start affecting the cost of shipping from January 2020.

Traders active in TD20 have indicated that the commercial companies need to hedge multiple calendar years forward in the TD20 route, which would result in tripling trading volumes in the calculation scenario above, with potential open interest of 46,800 lots.

However, the growth of this contract is restricted by the current *de minimis* position limit. Further development of this contract requires dynamic changes of the current limit from a fixed 2.500 lots level to a much higher limit based on the open interest.

Furthermore, overly restrictive position limits often lead market participants to reduce positions as a result of a limit rather than genuine economic need.

In one of ICE Futures Europe’s oil futures contracts the following situation has arisen:

MiFID II Position Limit: 2,500 lots

Company A position: -4,300 lots

Company B position: +2,800 lots

Company C position: +1,500 lots

In the above example, Company A must buy back 1,800 lots to get below the limit, but Company B need sell only 300 and Company C need not sell anything at all. For Company A to comply with the limit, therefore, it will have to bid the contract up so high that B and C cannot resist selling at prices driven by position limit requirements rather than supply and demand. As soon as Company A’s position has fallen to 2,500 lots, the bidding will stop and the price will collapse. This volatility does not contribute to orderly markets. Rather, an inquiry as to intent would be sent to the trader’s market access provider and a Suspicious Transaction and Order Report could be sent to the NCA.

<ESMA\_QUESTION\_PLPM\_1>

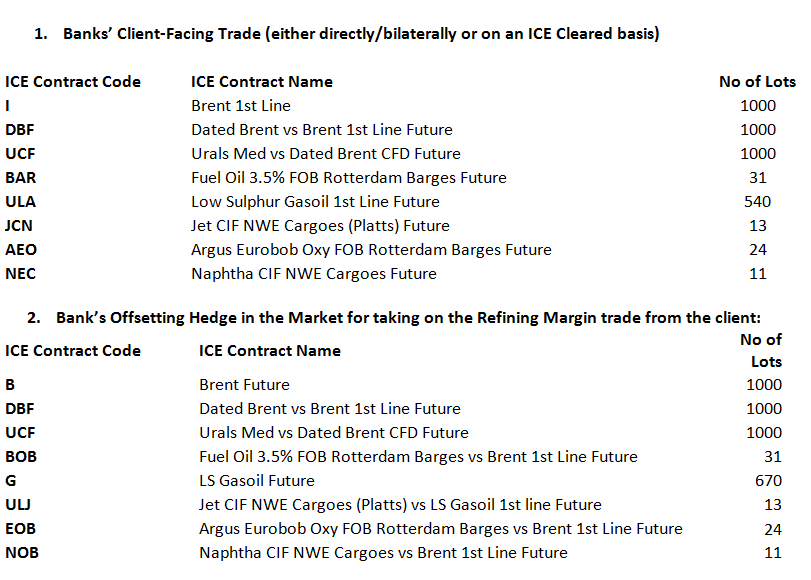
1. : Have you identified other structural changes in commodity derivative markets or in the underlying markets since the introduction of the MiFID II position limit regime, such as changes in market participants? If so, please provide examples, and where available data, and differentiate per commodity derivative asset class where relevant.

<ESMA\_QUESTION\_PLPM\_2>

The Exchanges have observed that it is increasingly difficult for financial counterparties, such as investment banks or commodity trading houses, to efficiently serve their clients in commodity markets (e.g., cocoa producers or oil refineries). We understand that these financial counterparties’ challenges are caused by their inability to hedge risk through more structurally complex transactions than simply trading on client’s account (see an example below).

The position limits regime includes exemptions for market participants pursuing hedging activity. However, the MiFID II definition of hedging as set out in RTS 20 is clear that only non-financial entities can engage in such activity, thereby rendering the exemption unavailable to investment banks or commodity trading houses, which both play a vital role in providing smaller commercial players with access to commodity derivatives markets. Therefore, the hedging exemption, as currently constructed, cannot be considered a solution to disproportionate position limits.

An example of such situation is the so called Refining Margin Hedge often used in oil markets, whereby an investment bank agrees with its client, a refiner, on a single price of a basket composed of various refined products. Once the refiner agrees the single price for the basket, the bank executes the offsetting trades in the futures market on its own account.



Even though within the context of such transaction the bank clearly performs a hedging activity on behalf of its client, it is not be able to use the hedging exemption envisaged under MiFIR Article 8 or MiFID Article 57. If the above bank wanted to serve the needs of all or most of its clients in the oil market, it would find itself in breach of position limits. Therefore, genuine hedging activity by firms, regardless of their classification as financial or non-financial players, should be recognised and allowed by the legislation.

<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>

ICE has considerable experience in operating a position management system. Long before the application of MiFID II, it had developed a comprehensive, risk-based regime based on position, delivery and expiry limits with regards to commodity derivatives traded on its markets. This regime is calibrated so as to prevent market abuse and ensure orderly delivery while allowing new products to be developed. Since January 2018, it has been operated by ICE in parallel with position limits set by the relevant National Competent Authorities (“NCAs”) under MiFID II.

The Exchanges have long been of the view that an effective and efficient position limits regime should concentrate on a limited number of benchmark contracts. ICE’s pre-MiFID II position management regime has adhered to that principle. Also, in order to prevent market squeezes, limits have been set by the Exchanges for the period right before expiry, rather than covering the entire maturity curve. The regime has contributed to preventing market abuse and excessive speculation, which could negatively impact price formation, while allowing new and nascent products to develop.

In the opinion of the Exchanges, a properly calibrated position management regime can play an important role in preventing market abuse. ICE does not consider the MiFID II position limits regime to have contributed to preventing market abuse in trading commodity derivatives on its platforms. Rather, this goal has been achieved by the Exchanges’ pre-existing position management regime, as well as their market supervision and surveiilance systems.

<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>

In the opinion of the Exchanges, a properly calibrated position management regime can play an important role in ensuring orderly pricing and settlement of commodity derivative contracts. ICE does not consider the MiFID II position limits regime to have contributed to achieving these objectives. Rather, this goal has been achieved by the Exchanges’ pre-existing position management regime, as well as their market oversight systems (including compliance, supervision and surveillance).

<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>

In the opinion of ICE, the MiFID II position limits regime has functioned without creating significant disruptions in 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 less liquid commodity derivative markets, the position limits regime has proven to be a substantial barrier. The market for new and fast growing commodity dertivates products has (1) suffered from an increasingly restrictive limit as open interest increases and inflexible categorization of products under the position limits framework, and (2) idoes not accurately reflect, in many cases, the characteristics of the underlying physical markets.

Please see the response to Q1 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 noted in its response to Q3, the Exchanges believe that a properly calibrated position management regime can play an important role in preventing market abuse. As indicated in its description of position management controls published on ESMA’s website, ICE operates a comprehensive position management regime, thereby ensuring compliance with its Rulebook and fulfilling requirements by the national legislation and CFTC requirements with regards to the so called Linked Contracts (contracts traded in the EU for equivalents of which position limits have been imposed in the US).

ICE is of the view that its pre-existing position management regime along with its market supervision and surveillance systems have contributed substantially to preventing market abuse in commodity markets operated by the Exchanges.<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>

As noted in its response to Q3, the Exchanges believe that a properly calibrated position management regime can play an important role in preventing market abuse. As indicated in its description of position management controls published on ESMA’s website, ICE operates a comprehensive position management regime, thereby ensuring compliance with its Rulebook and fulfilling requirements by the national legislation and CFTC requirements with regards to the so called Linked Contracts (contracts traded in the EU for equivalents of which position limits have been imposed in the US).

ICE is of the view that its pre-existing position management regime along with its market supervision and surveillance systems have contributed substantially to preventing market abuse in commodity markets operated by the Exchanges.

<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>

As indicated in its description of position management controls published on ESMA’s website, ICE has operated a comprehensive position management regime, thereby ensuring compliance with its Rulebook and fulfilling requirements by the national legislation and CFTC requirements with regards to the so called Linked Contracts.

ICE is of the view that its pre-existing position management regime has been effective and sufficient to ensure orderly trading and settlement in commodity derivatives admitted to trading on its markets.

<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>

<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>

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<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>

No. The Exchanges are of the view that an effective and efficient position limits regime should concentrate on a limited number of benchmark contracts, as these are markets in which price formation takes place. ICE believes that the MiFID II position limits regime functions without creating significant market disruption in a number of these well-developed benchmark contracts. These highly developed markets are characterised by a large number of different types of active trading firms and a substantial amount of open interest.

On the other hand, the position limits regime has proven to be a substantial barrier for the development of new products and growth of the illiquid commodity derivative markets. The market for new and fast growing illiquid commodity derivates products has (1) suffered from an increasingly restrictive limit as open interest increases and inflexible treatment in terms of their categorization under the position limits framework, and (2) does not inaccurately reflect, in many cases, the characteristics of the underlying physical markets.

<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. ICE is of the view that position limits should only be imposed on key benchmark contracts, which are crucial to the orderly functioning of their respective underlying commodity markets. This is because price formation mainly occurs in such benchmark products. Other commodity derivatives contracts follow the benchmark contracts in terms of price formation and thus do not need to be subject to limits. Also, many of the basis markets trade as spreads to the benchmark contract. In such cases, position limit for basis markets do not make a positive contribution to market orderliness but they do potentially restrict the usage of spread strategies as market participants can only execute the benchmark leg without breaching them.

Furthermore, limits should rather focus on positions leading up to expiry and at expiry as this is when any potential form of manipulation may realistically occur.

At the same time, it is important to emphasize that the Exchanges already have sophisticated systems and controls in place to achieve the policy objectives of MiFID II, i.e. ensuring orderly pricing and settlement and preventing market abuse.

<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>

<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>

ICE is of the view that there are no grounds for review of the EEOTC contracts definition. The Exchanges believe that the key objectives of introducing that concept into MiFID II have been: (i) to prevent circumvention of its provisions by trading equivalent contracts in the OTC market, and (ii) to allow for netting of equivalent contracts traded on venues and in the OTC markets. Both objectives have been achieved with the current definition. The mere fact that very few EEOTC contracts have been identified is not the evidence that the regime is overly restrictive. Rather, it demonstrates that indeed very few equivalent contracts exist in derivatives markets.

<ESMA\_QUESTION\_PLPM\_15>

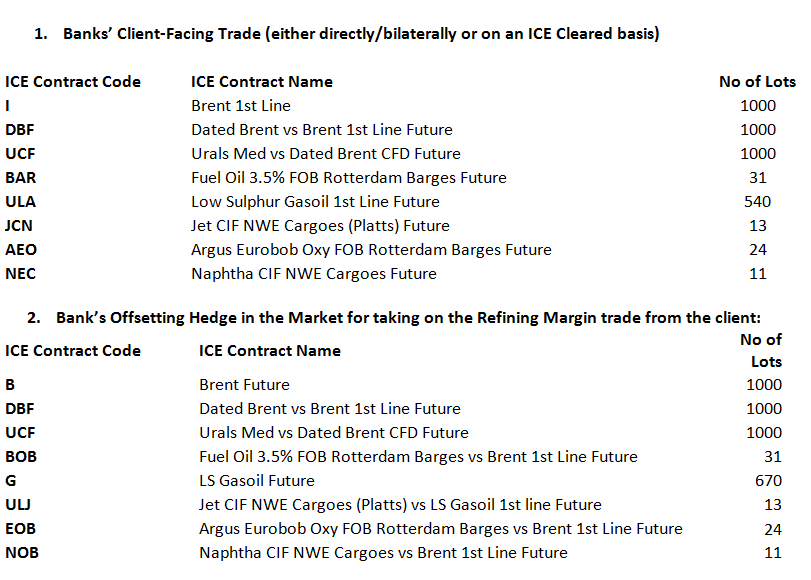
1. : In your view, would there be a need to review the MiFID II position limit exemptions? If so, please elaborate and explain which changes would be desirable.

<ESMA\_QUESTION\_PLPM\_16>

Yes. Whilst the position limits regime includes exemptions for market participants pursuing hedging activity, the MiFID II definition of *hedging* as set out in RTS 20 is clear that only non-financial entities can engage in such activity, thereby rendering the exemption unavailable to investment banks or certain commodity trading houses, which both play a vital role in providing smaller commercial players with access to commodity derivatives markets.

For that reason, the hedging exemption cannot be considered a universal solution to inappropriately designed position limits.

An example of such situation is the so called *Refining Margin Hedge* often used in oil markets, whereby an investment bank agrees with its client, a refiner, on a single price of a basket comprising various refined products. Once the refiner agrees the single price for the basket, the bank executes the offsetting trades in the futures market on its own account.



Even though within the context of such transaction the bank clearly performs a hedging activity, it would not be able to make use of the exemption envisaged under MiFIR Article 8 or MiFID Article 57. If the above bank wanted to serve the needs of all or most of its clients in the oil market, it would find itself in breach of position limits.

ICE has extensive experience with operating a position management system based on hedging exemptions. Under its regime, it can grant such exemptions to any market participant, regardless of their legal status, provided that the hedging intention is adequately documented and demonstrated. This ensures that the genuine hedging activity is not restricted and allows commodity market participants to manage their risks efficiently.

The Exchanges propose that an analogous regime is introduced within the context of MiFID II/MiFIR package.

<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>

ICE agrees that NCAs should have greater flexibility in setting position limits for cash settled contracts including taking into account other relevant factors beyond the current exhaustive list in RTS 21. These should take into account whether the cash settled contract is itself key to the price formation process of the underlying or not and the volume ofopen interest for both spot and other months. In some cases, such an approach would prevent negative, unintended consequences of the postion limits regime for commodity derivative contracts that serve as pricing benchmarks and risk-management proxies in the absence of direct hedging instruments. An example of such contract is the ICE Brent Crude Oil Futures, which allow market participants to hedge exposures in other oil grades as well as a number of gas markets through a very liquid and efficient market. Another example is the ICE Endex TTF Natural Gas Futures contract, which is a proxy for managing risks related to trades in the LNG market. The importance of the TTF Natural Gas Futures contract has grown substantially in recent months as Europe plays the role of balancing market. Overly restrictive position limits in TTF Futures constratins its ability to become a truly global benchmark for natural gas.

However, ICE does not support a change which mandates the setting of limits in spot month contracts based on open interest.

<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, the approach to new and illiquid contracts within the context of position limits regime should be revised. 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, ICE is of the view that changes thereto are urgently required. Such an amendment would better fulfil the overall policy objective of MiFID II to “*improve the functioning and transparency of commodity markets and address excessive commodity price volatility*”.

ICE is of the view that position limits should only be imposed on key benchmark contracts that are crucial to orderly functioning of their respective commodity markets, e.g. ICE Brent Futures contract, because the price formation mainly occurs in such benchmark products. Other commodity derivatives contracts are dependent on the main benchmark for their price formation and thus should not be subject to limits. Such benchmark contracts should be designated by the relevant National Competent Authorities in consultation with trading venues and subject to an opinion by ESMA.

Equally, new, less liquid and non-price forming contracts should not be subject to position limits. New and nascent products constitute a minor share of commodity markets. Such contracts simply do not influence price movements in the underlying physical commodity markets. Equally, non-price forming contracts simply follow the benchmark ones and cannot influence price formation in physical markets. Furthermore, even in the absence of position limits, these contracts would remain subject to trading venue position monitoring and management 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>

ICE supports the introduction of a forward-looking model whereby the position limit is calculated based on a form of extrapolation of the historical development of open interest in a certain market, as this approach would be better suited to accommodate periods of strong market growth.

Under the existing model a position limit is based on a percentage of the average amount of open interest of a certain historical period, which is usually a one, three, six or twelve months period depending on the characteristics of the commodity market. This backward-looking methodology inherently does not properly capture the potential future growth or even seasonal characteristics of a market and risks applying an over restrictive limit when a market experiences a period of strong growth. At a minimum and where appropriate, it should therefore be allowed to use the smallest possible period for the calculation of open interest levels (i.e. the average open interest of the most recent trading day) under the existing rules.

An alternative solution, more closely aligned with the physical market, would involve calculating limits on other months contracts with reference to deliverable supply which provides the best estimation of the size of positions which should be allowed. As a regional contract develops into a global benchmark, appropriate reference should be made to supply and churn rates associated with other benchmarks of a similar nature.

This approach would better address the market needs, particularly within the context of European Commission’s “International role of the euro” initiative.

<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>

TYPE YOUR TEXT HERE

<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>

No answer.

<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>

No, ICE does not consider any further requirements on position management controls to be necessary.

ICE has operated a comprehensive position management regime, thereby ensuring compliance with its Rulebook and fulfilling requirements imposed on the Exchanges by the national legislation as well as CFTC requirements with regards to the so called Linked Contracts.

ICE is of the view that its pre-existing position management regime along with its market supervision and surveillance systems have contributed substantially to preventing market abuse and ensuring orderly trading and settlement in commodity markets operated by the Exchanges.

<ESMA\_QUESTION\_PLPM\_22>