

Reply Form to the Consultation Paper

**MiFID II review report on position limits and position management
Draft Technical Advice on weekly position reports**



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 **8 January 2020**.

All contributions should be submitted online at www.esma.europa.eu under the heading 'Your input - Consultations'. Please follow the instructions given in the document 'Reply form for the consultation paper on ["MiFID II review report on position limits and position management and draft technical advice on weekly position reports"](#)' also published on the ESMA website.

Instructions

In order to facilitate analysis of responses to the Consultation paper, respondents are requested to follow the below steps when preparing and submitting their response:

1. Insert your responses to the questions in the Consultation paper in the present response form.
2. Please do not remove tags of the type <ESMA_QUESTION_WPR_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_WPR_nameofrespondent_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA_WPR_ABCD_RESPONSEFORM.
5. Upload the form containing your responses, in Word format, to ESMA's website (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 under the heading [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	Zertifikate Forum Austria
Activity	Banking sector
Are you representing an association?	<input checked="" type="checkbox"/>
Country/Region	Austria

Introduction

Please make your introductory comments below, if any

<ESMA_COMMENT_WPR_1>

Zertifikate Forum Austria as representative of the issuers of securitised derivatives in Austria always promoted an exclusion of securities derivatives from the position limit as the framework fails to recognise the different characteristics of securitised derivatives as transferable securities compared to other commodity derivatives. We fully support ESMA's view to exclude securitised derivatives from the scope of the position limit and therefore we only respond to Q3 of the Consultation Paper.

<ESMA_COMMENT_WPR_1>

Questions

Part I

Q1 : Which option (Option 1 or Option 2) do you support for dealing with competing contracts? Please explain why. If you support Option 1, do you have any suggestions for amending the definition of “same contract” in Article 5(1) of RTS 21? If you support another alternative, please explain which one and why.

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TYPE YOUR TEXT HERE
<ESMA_QUESTION_WPR_1>

Q2 : Do you agree that the C(6) carve-out creates an unlevel playing field across trading venues and should be reconsidered? If not, please explain why.

<ESMA_QUESTION_WPR_2>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_WPR_2>

Q3 : Do you agree that the position limit framework should not apply to securitised derivatives? If not, please explain why.

<ESMA_QUESTION_WPR_3>

Zertifikate Forum Austria agrees with the assessment of ESMA and fully supports the recommendation of excluding securitised derivatives from the position limit regime as the positions limit framework is not an appropriate tool for preventing market abuse and ensuring orderly pricing and settlement conditions in those instruments.

Furthermore, most securitised derivatives are held by a large number of retail investors and therefore a risk of abusing a dominant position is very remote and market abuse is almost impossible.

Moreover, securitised derivatives are comparable to ETCs, which do not fall under the position limit regime. Thus, it would be also consistent to exclude securitised derivatives from the scope of the position limit regime in Article 57 of MiFID II.

<ESMA_QUESTION_WPR_3>

Q4 : Which option do you support to address the negative impact of position limits on new and illiquid commodity derivatives: Option 1 or Option 2? Please explain why. If you support another alternative, please explain which one and why.

<ESMA_QUESTION_WPR_4>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_WPR_4>

Q5 : If you support Option 1 and would suggest different or additional criteria to determine whether a contract qualifies as a critical contract, please explain which ones.

<ESMA_QUESTION_WPR_5>

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<ESMA_QUESTION_WPR_5>

Q6 : Which open interest and participant threshold would you suggest for qualifying a commodity derivative as a critical one?

<ESMA_QUESTION_WPR_6>

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Q7 : Would you support a position limit exemption for financial counterparties under mandatory liquidity provision obligations? If not, please explain why.

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<ESMA_QUESTION_WPR_7>

Q8 : Would you support introducing a hedging exemption for financial counterparties along the lines described above? If not, please explain why.

<ESMA_QUESTION_WPR_8>

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<ESMA_QUESTION_WPR_8>

Q9 : Do you agree with ESMA's proposals to amend Article 57(8)(b) of MiFID II and to introduce Level 2 measures on position management controls? If not, please explain why.

<ESMA_QUESTION_WPR_9>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_WPR_9>

Part II

Q10 : Do you agree with the revised proposed minimum threshold level for the open interest criterion for the publication of weekly position reports? If not, please state your preferred alternative for the definition of this threshold and explain why.

<ESMA_QUESTION_WPR_10>

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<ESMA_QUESTION_WPR_10>

Q11 : Do you have any comment on the current number of position holders required for the publication of weekly position reports?



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