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| 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](http://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](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**

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| --- | --- |
| Name of the company / organisation | London Stock Exchange Group (“LSEG”) |
| Activity | Regulated markets/Exchanges/Trading System |
| Are you representing an association? |  |
| Country/Region | Europe |

**Introduction**

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

<ESMA\_COMMENT\_WPR\_1>

London Stock Exchange Group (“LSEG”) welcomes the opportunity to respond to this consultation paper on MiFID II review report on position limits and position management.

Borsa Italiana, part of the London Stock Exchange Group (“LSEG”), operates a derivatives market where *power futures* and *durum wheat futures* are traded. We also operate an MTF (SeDeX) dedicated to securities derivatives, where more than 10.000 financial instruments are traded, subject to position limits regime.

We actively collaborate with issuers and intermediaries to promote efficient and orderly functioning of the markets. With this objective in mind, we have developed an automated tool for position reporting of commodity derivatives in compliance with the position reporting regulation.

Based on our experience since the entry into force of MiFID II, we would like to raise the following issues:

* We agree with ESMA analysis to exclude securitised derivatives (SDs) from the scope of position limits regime. These instruments are characterised by a number of different issuances registered within the central securities depository and the regime provides limited benefits also considering that the issuance size already constitutes a position limit.
* We believe that the position limits regime for new and illiquid contracts could be better calibrated. In order to limit the negative impact of position limits on new and illiquid contracts, we suggest reducing the scope to a limited set of significant, more critical contracts as reflected in the ESMA proposed option 1. This will result in various advantages i.e. indirectly limiting the impact of position limits on new and illiquid contracts and increase the consistency with the US market applicable discipline.
* We believe that only the information needed for supervisory purposes should be reported, therefore in the absence of position limits, the position reporting should be waived accordingly.

<ESMA\_COMMENT\_WPR\_1>

**Questions**

**Part I**

1. : 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.

<ESMA\_QUESTION\_WPR\_1>

While both options could improve the conditions for fair competition between more liquid and less liquid markets, the Option 2 is prefereble. Correcting Level 1 legislation could limit the risk that some CDs that do not share exactly the same characteristics could be treated differently, avoiding the potential uninted effects of Option 1.

The recognition of a mandate to CA to agree on the application of the same limits as baseline for the position limits regime could allow greater flexibility, taking into account the characteristics and diversity arising from both the CDs and the markets.

In this context, it is also worth considering the role that ESMA could have in facilitating and coordinating the achievement of such agreements between NCAs, in order to ensure that a common approach is in place.

<ESMA\_QUESTION\_WPR\_1>

1. : 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>

We agree with applying the same rule to the same instruments, independently of the EU trading venue where those instruments are traded, as the logic for any such differentiation remains unclear and unjustified. Therefore, the C(6) carve-out rule should be reconsidered.

<ESMA\_QUESTION\_WPR\_2>

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

<ESMA\_QUESTION\_WPR\_3>

We agree with ESMA analysis to exclude securitised derivatives from the scope of position limits reporting. As outlined in our response to 24 May 2019 ESMA call for evidence on position limits and position management in commodities derivatives, and as reported in this consultation paper, the position limit framework fails to recognise the unique characteristics of securitised derivatives, compared to other commodity derivatives. Therefore, we support a legislative amendment to exclude securitised derivatives from the scope of the entire Title IV of the MiFID Directive.

We would like to highlight that not only the position limits regime is inappropriate for monitoring the SD markets, but we also have exeperinced that the duties to report the positions according to article 58 of MiFID should be waived, given that both position limits thresholds and the relevant reporting activity represent a unique set of rules with a unique purpose.

In particular, we share ESMA’s view that the characteristics of the securitised derivatives market are such that a large number of products is held by a large number of retail investors, making the reporting a burdensome activity for market participants, with a limited value for monitoring purposes.

<ESMA\_QUESTION\_WPR\_3>

1. : 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>

We prefer Option 1 to address the negative impact of position limits on new and illiquid commodity derivatives. Identifying the critical commodity derivatives would provide a number of benefits.

First, it will reduce the number of CDs subject to position limits discipline, indirectly limiting the impact of such discipline on new and illiquid contracts. This approach would be more consistent with the US market, where position limits apply to a limited set commodities, thereby avoiding regulatory arbitrage between the US and EU markets.

Regarding the factors to be assessed for the purposes of identification of the critical contracts, the notion of market participants should not to be limited to the “market members” considering that the effective market participants in some trading venues operate thorough a broker.

In addition, Borsa Italiana has experienced that not only position limits but also reporting obligations represent a high cost of compliance and an operational burden in new and illiquid markets, which has resulted in a decrease of the number of market participants. Therefore, we do not share the ESMA’s view that, also in a reduced position limits discipline, “*all commodity derivatives and related EEOTC should continue to be subject to daily position reporting*”.

In spite of the fact that we have implemented an integrated and user-friendly systems to faciliatate position reporting, we believe that only the information needed for supervisory purposes should be reported and in absence of a position limits the position reporting does not fulfil such requirement.

Our understanding is that ESMA was of the opinion to exclude daily reporting obligations when there are not position limits in the latest “Q&A on MiFID II and MiFIR commodity derivatives topics” on March 2019. In the answer 4.9 excluding SDs with a total number of securities in issue not exceeding 2.5 million from the daily position reporting, ESMA states that “*The purpose of daily reporting is to monitor for potential breaches of position limits. To that end, Article 58(3) of MiFID II stipulates that daily position reporting shall enable monitoring of compliance with Article 57(1) of MiFID II. Accordingly, the reporting requirement has been set for situations in which reporting is necessary to enable monitoring. As a consequence, NCAs do not need to require daily reporting if the possibility of a breach of position limits can be ruled out from the outset*.”. This position is also confirmed in answer 4.15 of the same Q&A, about C(10) derivatives, where ESMA states “*The purpose of daily reporting is to monitor for potential breaches of position limits as Article 58(3) of MiFID II stipulates that daily position reporting shall enable monitoring of compliance with Article 57(1) of MiFID II (…)]”.*

<ESMA\_QUESTION\_WPR\_4>

1. : 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>

We do not have any additional criteria to propose.

<ESMA\_QUESTION\_WPR\_5>

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

<ESMA\_QUESTION\_WPR\_6>

We do not have any comment.

<ESMA\_QUESTION\_WPR\_6>

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

<ESMA\_QUESTION\_WPR\_7>

We support a position limit exemption for financial counterparties (FC) for the positions held, which are objectively measurable as fulfilling obligations to provide liquidity.

Moreover, considering that in some markets a significant amout of market makers are non financial counterparties (NFC), it could be consistent to exend this exemption also to NFC performing the same maket making activity in trading venues.

<ESMA\_QUESTION\_WPR\_7>

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

<ESMA\_QUESTION\_WPR\_8>

We support introduction of a hedging exemption for financial counterparties who, within a commercial group, manage the positions of the group non-financial entities.

<ESMA\_QUESTION\_WPR\_8>

1. : 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>

We do not consider a further specification of Art. 57(8)(b) MiFID II necessary.

The controls performed by trading venues are appropriate, with the information gathered from the trading activity and from the existing reporting from members. Moreover, when the trading venues investigate their trading member’s activity, it is up to the trading member to provide the additional information necessary to clarify their trading behaviour.

Therefore, a further specification of trading venues’ control powers may not be advisable as well as it may not be advisable to extend the scope of the information to be provided by trading members to trading venues, covering also the contracts on the same underlying, on competing trading venues or traded OTC.

Trading venues have no possibility to verify the data through a cross-reference with the competing trading venues, and such extended monitoring activity is not part of the trading venues duties. Such powers should remain within the NCAs mandate, as they have a broader perspective, are entitled to carry out the analysis and share information among themselves.

<ESMA\_QUESTION\_WPR\_9>

**Part II**

1. : 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>

We agree that the criterion proposed is easier to measure and thus preferable. To prevent that the obligation to produce a weekly report depends on how a trading venue defines the lot, we recommend to define for each derivative contract a “standard lot” as a certain amount of the underlying commodity.

<ESMA\_QUESTION\_WPR\_10>

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

<ESMA\_QUESTION\_WPR\_11>

We do not have any comment.

<ESMA\_QUESTION\_WPR\_11>