



European Securities and
Markets Authority

Response Form to the Consultation Paper

Technical standards for commodity derivatives



Responding to this paper

ESMA invites comments on all matters in this consultation paper and in particular on the specific questions summarised in Annex I. 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 **23 July 2021**.

All contributions should be submitted online at www.esma.europa.eu under the heading 'Your input - Consultations'.

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_CD_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_PFG_nameofrespondent_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA_PFG_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" → "Consultation 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

This document will be of interest to asset managers managing retail funds and their trade associations, as well as institutional and retail investors investing into such funds and their associations.

General information about respondent

Name of the company / organisation	NASDAQ
Activity	Regulated markets/Exchanges/Trading Systems
Are you representing an association?	<input type="checkbox"/>
Country/Region	Europe

Introduction

Please make your introductory comments below, if any

<ESMA_COMMENT_CD_00>

Nasdaq appreciates the opportunity to provide comments to the ESMA consultation on Technical Standards for Commodity Derivatives. We welcome ESMA's proposals in order to improve the current regime.

Nasdaq fully supports the proposed changes for commodity derivatives position limit regime in the Capital Markets Recovery Package, which includes important improvements and measures.

These measures will facilitate for European companies to hedge their risks. They will also contribute to provide a more harmonized regulatory and supervisory approach across European exchanges, which will strengthen the functioning of the important European Energy market.

With regards to Part III Nasdaq appreciates ESMA's intention to harmonize position management controls (PMC). Yet Nasdaq find that the suggested RTS 21a is overly prescriptive with regards to the measures and actions to be implemented by trading venues. While the proposed regulation is not explicit with regards to defining a scope for which contracts the accountability levels should be set, although it implies that the physically settled commodity derivatives is in focus.

Nasdaq recommends that the scope of the accountability levels regime is clearly limited to physically settled commodity derivatives.

Furthermore, it should allow the trading venues the necessary discretion to operate the accountability level regime in an efficient and effective manner, i.e. without a disproportionate burden on trading venues and reporting entities.



Finally, Nasdaq would encourage ESMA to find ways for NCAs to co-ordinate their review of accountability levels across jurisdictions.

<ESMA_COMMENT_CD_00>



Questions

Q1 : Do you agree with ESMA's proposal regarding the impact of the new hedging exemption on the aggregation of positions? If not, please elaborate.

<ESMA_QUESTION_CD_01>

Yes, Nasdaq agrees with ESMA's proposal.

<ESMA_QUESTION_CD_01>

Q2 : Do you agree with ESMA's proposal for positions qualifying as risk-reducing? If not, please elaborate and provide an alternative proposal.

<ESMA_QUESTION_CD_02>

Yes, Nasdaq agrees with ESMA's proposal.

<ESMA_QUESTION_CD_02>

Q3 : Do you agree with ESMA's proposal on the application procedure for financial entities?? If not, please elaborate and provide an alternative proposal.

<ESMA_QUESTION_CD_03>

Yes, Nasdaq agrees with ESMA's proposal.

<ESMA_QUESTION_CD_03>

Q4 : Do you agree with ESMA's proposal on the application procedure for mandatory liquidity provision exemption? If not, please elaborate and provide an alternative proposal.

<ESMA_QUESTION_CD_04>

Yes, Nasdaq agrees with ESMA's proposal.

<ESMA_QUESTION_CD_04>

Q5 : Do you agree with ESMA's proposal on qualifying positions? If not, please elaborate and provide an alternative proposal.

<ESMA_QUESTION_CD_05>

Yes, Nasdaq agrees with ESMA's proposal.

<ESMA_QUESTION_CD_05>

Q6 : Do you agree with ESMA's proposed definition of financial entities? If not, please elaborate.

<ESMA_QUESTION_CD_06>

Yes, Nasdaq agrees with ESMA's proposal.

<ESMA_QUESTION_CD_06>



Q7 : Do you agree with ESMA's proposal regarding the aggregation and netting of positions in a commodity derivative? If not, please elaborate and provide an alternative proposal where available.

<ESMA_QUESTION_CD_07>

Yes, Nasdaq agrees with ESMA's proposal.

<ESMA_QUESTION_CD_07>

Q8 : Do you agree with ESMA's proposal for significant volumes? If not, please elaborate.

<ESMA_QUESTION_CD_08>

Yes, Nasdaq agrees with ESMA's proposal.

<ESMA_QUESTION_CD_08>

Q9 : Do you agree with ESMA's proposal? If not, please elaborate and provide an alternative proposal where available.

<ESMA_QUESTION_CD_09>

We do not agree with ESMA's proposal.

It is unclear which rationale ESMA uses to move to open interest for contracts for which the deliverable supply is sufficiently higher than open interest. We do not consider there to be an increased risk of market manipulation and are concerned that the change would again hinder growth in such markets, which are typically small and not yet developed.

We therefore strongly recommend maintaining the current regime for the spot month limits.

<ESMA_QUESTION_CD_09>

Q10 : Do you agree with ESMA's proposal? If not, please elaborate.

<ESMA_QUESTION_CD_10>

Yes, Nasdaq agrees with ESMA's proposal.

<ESMA_QUESTION_CD_10>

Q11 : Do you agree with ESMA's proposals regarding Article 14 of RTS 21a? If not, please elaborate and provide alternative proposals.

<ESMA_QUESTION_CD_11>

Yes, we agree with ESMA's proposal on how to calculate open interest.

It is highly important that the calculation of open interest is harmonised across all European NCAs.

<ESMA_QUESTION_CD_11>

Q12 : Do you see merit in the new approach considered by ESMA for new and less liquid agricultural commodity derivatives? If not, please elaborate and provide an alternative proposal.

<ESMA_QUESTION_CD_12>

Yes, Nasdaq agrees with ESMA's proposal.



<ESMA_QUESTION_CD_12>

Q13 : Do you agree with ESMA's proposal regarding Article 19 of RTS 21a? If not, please elaborate.

<ESMA_QUESTION_CD_13>

Yes, we agree with ESMA on adjusting the other month position limit upwards when open interest is significantly lower than deliverable supply.

We would not agree with the ESMA proposal to adjust the spot month position limit downwards when open interest is significantly lower than deliverable supply. As outlined in Question 9 we do not see the rationale for doing so. There is no increased risk of market manipulation, and it could hamper growth in these undeveloped markets.

<ESMA_QUESTION_CD_13>

Q14 : Do you agree with ESMA's proposal regarding the upward adjustment factor to be used in case of a small number of market participants or less than three investment firms acting as market makers? If not, please elaborate and provide an alternative proposal.

<ESMA_QUESTION_CD_14>

Yes, Nasdaq agrees with ESMA's proposal.

<ESMA_QUESTION_CD_14>

Q15 : Do you agree with ESMA's proposed amendments to ITS 4? If not, please elaborate.

<ESMA_QUESTION_CD_15>

Yes, Nasdaq agrees with ESMA's proposal regarding the hedging exemption and liquidity provision exemption. Only the legal reference (RTS 21 -> RTS 21a) of the hedging field should be updated.

<ESMA_QUESTION_CD_15>

Q16 : Do you agree with ESMA's suggestion to introduce such ongoing position monitoring requirement in the draft RTS? If not, please elaborate.

<ESMA_QUESTION_CD_16>

Trading venues have already adopted position management regimes and Nasdaq support this for physical settled commodity derivatives.

Nevertheless, we advise ESMA to not introduce the "persons with close links" wording in Article 1 of the proposed RTS21a, and rather use the wording in MIFID Article 58 par 3. Increasing the scope through the "persons with close links" would unduly increase the burden for reporting entities with little added value for the position management regime.

<ESMA_QUESTION_CD_16>

Q17 : Do you agree with ESMA's suggestion to introduce accountability levels as part of position management controls? Do you agree with ESMA's assessment that



accountability levels would be of particular relevance for physically settled commodity derivatives? If not, please elaborate and provide alternative proposals.

<ESMA_QUESTION_CD_17>

Nasdaq finds that accountability levels are only relevant for physically settled commodity derivatives. The Market Abuse Regulation (MAR) and the Regulation on Energy Market Integrity and Transparency (REMIT) clearly define and prohibit market manipulation.

With these regulations, NCAs and trading venues have the necessary authority to ensure fair markets with efficient price discovery in financially settled commodity derivatives within the abovementioned regulatory frameworks.

To squeeze a financially settled commodity derivative one would need to manipulate the underlying market or index. This can not be prevented by position management controls, but must be prohibited in relevant legislation, like REMIT for the whole sale energy markets.

As such we kindly request ESMA to keep the scope of accountability levels clearly limited to physically settled commodity derivatives.

Further we see that the suggested Article 2 should guide exchanges on possible actions. I.e. not state explicit requirements on when they shall reach out to clients. This would be overly prescriptive and trading venues are able to operate this efficiently without the explicit requirements. One could address this by replacing the word “shall” with “may” in all paragraphs of Article 2 in the draft RTS 21a.

<ESMA_QUESTION_CD_17>

Q18 : In your view, how should accountability levels be set for the spot month and the other months? Based on which methodology or criteria? Should all types of positions count towards the accountability levels?

<ESMA_QUESTION_CD_18>

As stated in Q17 Nasdaq advises ESMA to avoid introducing an overly prescriptive accountability levels regime, and a clear limitation of the scope to the physically settled commodity derivatives.

Considering physically settled derivatives, there are more parameters relevant for applicability of accountability levels than the simplified spot month and other months approach. Some of the relevant parameters to consider before applying accountability levels;

- Liquidity in the relevant contract
- The contract's importance for the markets price formation
- Deliverable supply

It is inconceivable to define an efficient one-size-fits-all regime that would address all relevant considerations. Instead trading venues should have discretion with regards to determining which contracts accountability levels are relevant for and the methodology.

<ESMA_QUESTION_CD_18>

Q19 : Do you agree with ESMA's suggestion to introduce requirements for the review of accountability levels? Do you also agree with ESMA's proposal regarding reporting requirements to the NCA on accountability levels? If not, please elaborate.



<ESMA_QUESTION_CD_19>

Yes, we agree. Yet Nasdaq would welcome an obligation for NCAs to coordinate their review of accountability levels for contracts with the same underlying across trading venues and NCA jurisdictions.

<ESMA_QUESTION_CD_19>

Q20 : In your view, what other types of position management controls could be further specified in the draft RTS?

<ESMA_QUESTION_CD_20>

Find ways of harmonizing position management controls across EU commodity derivative trading venues, without prescribing overly prescriptive routines. Preferably through increased NCA co-operation across jurisdictions.

<ESMA_QUESTION_CD_20>

Cost Benefit Analysis

CBA Q1: This first question aims at identifying the category of firm/entity you belong to. Please provide the total notional amount traded in commodity derivatives traded on a trading venue (and EOTC contracts where relevant in 2020 in thousand euros and the related total number of trades in the relevant boxes).

<ESMA_QUESTION_CD_21>

TYPE YOUR TEXT HERE

Category	Number of employees	Total notional amount traded in 2020 in thousand euros	Number of trades in 2020
Trading venue	[1-50]		
	[51-250]		
	[251-500]		
	>500		
Financial entity	[1-50]		
	[51-250]		
	[251-500]		
	>500		
Non-financial entity	[1-50]		
	[51-250]		
	[251-500]		
	>500		

<ESMA_QUESTION_CD_21>

CBA Q2: for Financial entities: Do you intend to apply for an exemption for risk-reducing positions related to the commercial activities of the commercial entity of the group? What percentage of your positions do these risk-reducing positions account for?



<ESMA_QUESTION_CD_22>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_CD_22>

CBA Q3: Do you intend to apply for an exemption for positions resulting from transactions undertaken to fulfil mandatory liquidity provision? What percentage of your positions do these positions account for?

<ESMA_QUESTION_CD_23>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_CD_23>

CBA Q4: Is there any specific provision in draft RTS 21a that you would expect to be a source of significant cost? If so, please elaborate.

<ESMA_QUESTION_CD_24>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_CD_24>

CBA Q5: Taking into account the size of your firm, would you qualify overall compliance costs with draft RTS 21a as low, medium or high?

<ESMA_QUESTION_CD_25>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_CD_25>

CBA Q6: Is there any specific provision in the draft RTS on position management controls that you would expect to be a source of significant cost? If so, please elaborate.

<ESMA_QUESTION_CD_26>

The introduction of “persons with close links” and obligations for market surveillance units suggested in Article 2 of the proposed RTS 21a would likely lead to significantly increased costs for trading venues and market participants.

We therefore recommend that ESMA amends the draft RTS according to our responses to Q16-Q18. Through these amendments one would avoid unnecessary enquires from trading venues to market participants. Yet trading venues will be able to operate efficient and effective position management controls. Should these obligations remain, the abovementioned stakeholders would likely be forced to increase their staffing to perform a task with no benefit for the market or relevant stakeholders.

<ESMA_QUESTION_CD_26>

CBA Q7: Taking into account the size of your firm, would you qualify overall compliance costs with amended the draft RTS on position management controls as low, medium or high?

<ESMA_QUESTION_CD_27>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_CD_27>

