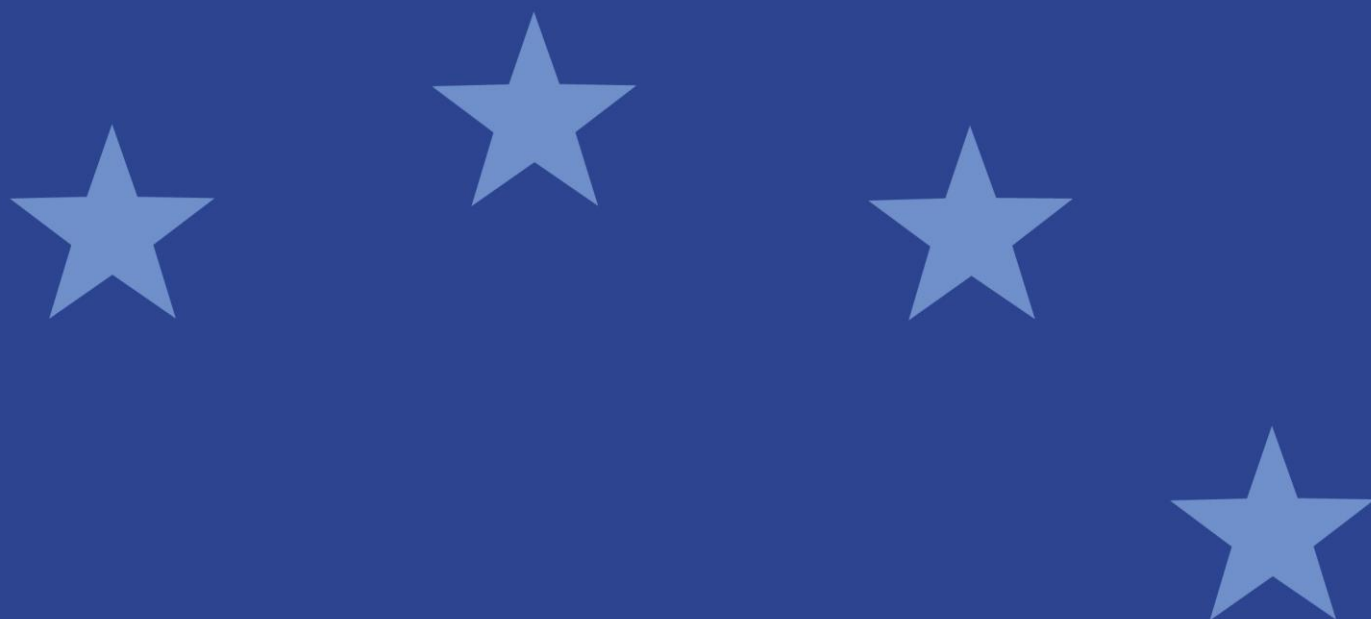


Response Form to the Consultation Paper

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	NOREXECO ASA
Activity	Regulated markets/Exchanges/Trading Systems
Are you representing an association?	☐
Country/Region	Norway

Introduction

Please make your introductory comments below, if any

<ESMA_COMMENT_CD_00>

In general NOREXECO supports the submission from EUROPEX, the group of European energy exchanges.

NOREXECO operates and builds a new global, financial market for the pulp and paper industry. NOREXECO observes that the overall regulatory burden for industrial companies when participating in exchange trading tends to push the activity away from the regulated markets and in the direction of the banks.

A general comment is that all reference to limits relates to number of lots without relation to the value of a lot.

We notice, ref EU 2021/338, that the threshold of 300,000 lots in total open interest has been introduced for the scope of the position limit regime. We also notice that the definition of Lot has been clarified and included in the definitions in Article 2 in RTS21a. As the lot value is not part of the threshold, the limit may be reached also for small markets. Example: 1 lot @ 800 € would mean that a market with an open interest value of 240,000,000 € would be subject to the Position limit regime. We had assumed that the intention of introducing a threshold was to exempt small and emerging financial markets from the Position limit regime until they reach a significant market value.

<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>
TYPE YOUR TEXT HERE
<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>
TYPE YOUR TEXT HERE
<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>
TYPE YOUR TEXT HERE
<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>
TYPE YOUR TEXT HERE
<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>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_CD_05>

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

<ESMA_QUESTION_CD_06>
TYPE YOUR TEXT HERE
<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>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_CD_07>

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

<ESMA_QUESTION_CD_08>
TYPE YOUR TEXT HERE
<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>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_CD_09>

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

<ESMA_QUESTION_CD_10>
TYPE YOUR TEXT HERE
<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>
TYPE YOUR TEXT HERE
<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>
TYPE YOUR TEXT HERE
<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>
TYPE YOUR TEXT HERE
<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>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_CD_14>

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

<ESMA_QUESTION_CD_15>
TYPE YOUR TEXT HERE
<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>
NOREXECO does not support the proposal.

The introduction of 'persons with close links' is a dramatic expansion of the position monitoring regime. It will create a new dimension, many-to-many relations, to the monitoring performed by TVIs. A dimension probably no one has systems in place for.

The cost of developing support for this will be significant. Not only for the IT systems required, but also to create and enforce an efficient reporting of changes in 'closed linked persons' from the various position holders of which many do not have any relation to the TVI except they have a position held, for example, as a client of a client of a member on the TVI.

One position holder's action may create 'position alarms' across a global network of linked persons when many-to-many relations are introduced. This may result in a large effort to investigate and collect information.

The already implemented reporting of ultimate owner should be sufficient.
<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>
The CP suggests that physically settled contracts are more exposed for corner, or market squeeze situations than financially settled contracts. As such, accountability levels are proposed introduced for physically settled contracts.

In Article 2 Accountability levels, par 1 – the expression used is '... at least for the physically settled commodity derivatives..'.
<ESMA_QUESTION_CD_17>

The expression creates uncertainty over the scope of this requirement. There is no specification of what would be the criteria for including other than physically settled contracts.

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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	[8]	20,115	84
	[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>

Yes, the introduction of the 'persons with closed links' will be a significant cost driver, both initially and as a going operation.

It is also assumed that the holders of position will find it unattractive to be required to report to a TV whenever there is a change in their initially reported close linked persons leading to less interest for participating in regulated markets.

<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>

High. Increased operating cost. Possible reduced revenue due to another, additional compliance obligation on the market participant hand.

<ESMA_QUESTION_CD_27>