



MANAGED FUNDS
ASSOCIATION



European Securities and Markets Authority
201-203 rue de Bercy
75012 Paris

By online submission - www.esma.europa.eu

8 January 2020

**Consultation Paper: MiFID II review report on position limits and position management
- AIMA and MFA response**

Dear Sir or Madam,

The Alternative Investment Management Association¹ ("AIMA") and Managed Funds Association² ("MFA"; collectively, the "Associations") welcome the opportunity to respond to the European Securities and Markets Authority ("ESMA") regarding its "Consultation Paper: MiFID II review report on position limits and position management"³ ("the CP").

We have in recent years highlighted our fundamental concern that position limits in commodities markets have the potential to distort price formation, dampen liquidity and undermine firms' hedging activities, while being unlikely to deliver clear benefits in terms of limiting the potential for disorderly

¹ AIMA is the global representative of the alternative investment industry, with more than 1,900 corporate members in over 60 countries. AIMA's fund manager members collectively manage more than \$2 trillion in assets. AIMA draws upon the expertise and diversity of its membership to provide leadership in industry initiatives such as advocacy, policy and regulatory engagement, educational programs and sound practice guides. AIMA works to raise media and public awareness of the value of the industry. AIMA set up the Alternative Credit Council ("ACC") to help firms focused in the private credit and direct lending space. The ACC currently represents over 100 members that manage \$350 billion of private credit assets globally. AIMA is committed to developing skills and education standards and is a co-founder of the Chartered Alternative Investment Analyst designation (CAIA) – the first and only specialized educational standard for alternative investment specialists. AIMA is governed by its Council (Board of Directors).

² Managed Funds Association (MFA) represents the global alternative investment industry and its investors by advocating for sound industry practices and public policies that foster efficient, transparent, and fair capital markets. MFA, based in Washington, DC, is an advocacy, education, and communications organization established to enable hedge fund and managed futures firms in the alternative investment industry to participate in public policy discourse, share best practices and learn from peers, and communicate the industry's contributions to the global economy. MFA members help pension plans, university endowments, charitable organizations, qualified individuals and other institutional investors to diversify their investments, manage risk, and generate attractive returns over time. MFA has cultivated a global membership and actively engages with regulators and policymakers in Asia, Europe, the Americas, Australia and many other regions where MFA members are market participants.

³ ESMA70-156-1484. Online at: https://www.esma.europa.eu/sites/default/files/library/esma70-156-1484_cp_position_limits.pdf.

trading or market abuse. We therefore welcome ESMA's work to consider whether the MiFID II position limits framework should be modified and believe that ESMA makes a number of helpful suggestions in the CP.

In our detailed response, we make the following points:

- We welcome the potential change to the "Same Contract" provision to introduce a new approach to calculating limits that references the most liquid market where contracts that share the same characteristics trade.
- We support ESMA's conclusion that the position limit framework should not apply to securitized derivatives on the basis that this would be consistent with the treatment of commodity contract for differences ("CFDs") and Exchange Traded Commodities.
- We strongly support implementing limits on a narrower range of contracts. We believe this will greatly reduce the compliance burden associated with the rules, while improving the position for new contracts.
- In determining critical contracts for which limits will be set, we believe the framework should consider whether those contracts have limits under other regimes.

Please refer to the Annex to this letter for further detail on these.

If you would like to discuss any aspect of this submission further, please contact Adam Jacobs-Dean (ajacobs-dean@aima.org) and Jennifer Han (jhan@managedfunds.org).

Yours truly,

/s/ Adam Jacobs-Dean

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Annex

Q 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.

We acknowledge ESMA’s finding that “Same Contract” provisions are too rigid, leading to a misalignment in the level of limits set for similar contracts on competing venues and potentially disadvantaging venues with a lower level of open interest in a given contract.

Of the options put forward by ESMA – change the definition of “same contract” to make it broader (Option 1) or remove the same contract procedure and instead introduce a new approach to calculating limits that references the most liquid market on which contracts which share the same characteristics trade (Option 2) – our preference is for Option 2. We would caution against Option 1 on the basis that it could necessitate consequential changes to the concept of “economically equivalent OTC” (“EEOCTC”) contracts, which could lead to unintended consequences and additional compliance uncertainty for our member firms.

We would also note that this shortcoming in the framework could also be tackled by a significant reduction in the set of contracts to which position limits apply, in line with our response to Question 4.

Q 3: Do you agree that the position limit framework should not apply to securitised derivatives? If not, please explain why.

We support ESMA’s conclusion that the position limit framework should not apply to securitized derivatives on the basis that this would be consistent with the treatment of commodity CFDs and Exchange Traded Commodities.

Q 4: 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.

We fully agree with ESMA’s assessment that position limits can have a negative impact on the viability of new and illiquid contracts, which has broader consequences for innovation and competition in commodities markets. This reflects the fact that the number of participants entering into new commodity derivative contracts tends to be low in the period soon after their launch, such that limits are more likely to restrict participants in their trading activities, thereby leading to a reduction in open interest.

In terms of the potential options that ESMA outlines to deal with this problem – either placing limits only on a narrower range of contracts (Option 1) or creating an additional carve-out for the first year of trading in a contract (Option 2) – our strong preference is for Option 1.

This option has the benefit of being more straightforward from both a supervisory and compliance standpoint and also recognizes that in practice position limits are not effective in mitigating the

potential for market disorder or abusive behaviour. We believe that this approach would also best advance the goal of regulatory consistency when it comes to the imposition of position limits, notably by bringing the European position limits framework closer to that of the U.S. Commodity Futures Trading Commission (CFTC).

Q 5: 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.

We believe that it would also be appropriate to consider whether position limits for the contract are in place in other key jurisdictions in which similar contracts are traded, including the US and, following Brexit, the UK.