

## Chapter 10

# Commodity derivative position limits and controls, and position reporting



## 10.5 Other reporting, notifications and information requirements

### Information requirement

- 10.5.1 **G** Regulation 27 of the *MiFI Regulations* provides the *FCA* with the power to:
- (1) require a *person* to provide information including all relevant documentation, on, or concerning:
    - (a) a position the *person* holds in a contract to which a position limit relates; and
    - (b) trades the *person* has undertaken, or intends to undertake, in a contract to which a position limit relates; and
  - (2) require an operator of a *trading venue* to provide information including all relevant documentation on, or concerning, trades a *person* has undertaken, or intends to undertake in a contract to which a position limit relates.

[Note: article 69(2)(j) of *MiFID*]

### Power to intervene

- 10.5.2 **G** The following provisions of the *MiFI Regulations* regulate the power of the *FCA* to intervene in respect of position limits:
- (1) Regulation 28 provides that the *FCA* may, if it considers necessary, limit the ability of any *person* to enter into a contract for a *commodity derivative*, restrict the size of positions a *person* may hold in such a contract, or require any *person* to reduce the size of a position held, notwithstanding that the restriction or reduction would be more restrictive than the position limit established by the *FCA* in accordance with article 57 of *MiFID* to which the contract relates; and
  - (2) Paragraph 5 of Schedule 1 provides that the *FCA* must maintain arrangements designed to enable it to determine whether *persons* on whom the *FCA* imposes position limit requirements are complying with those requirements, and also maintain arrangements for enforcing the position limits requirements on such *persons*.

[Note: article 69(2)(o) and 69(2)(p) of *MiFID*]

**Reporting requirements**

- 10.5.3 **G** The following provisions of the *MiFI Regulations* regulate the power of the *FCA* to impose reporting requirements in respect of positions taken in *commodity derivatives* and *emission allowances*:
- (1) Paragraph 8 of Schedule 1 provides that a *person* must provide the *FCA* with information in respect of its compliance or non-compliance with position limit requirements, as the *FCA* may direct; and
  - (2) Paragraph 5 of Schedule 1 provides that the *FCA* must maintain arrangements designed to enable it to determine whether *persons* on whom the *FCA* imposes position limit requirements are complying with those requirements, and also maintain arrangements for enforcing the position limits requirements on such *persons*.
- [Note: article 69(2)(j) of *MiFID*]

**Breaches of MAR 10 by unauthorised persons**

- 10.5.4 **D**
- (1) An *unauthorised person* to which this chapter applies must notify the *FCA* of:
    - (a) a breach of a direction in this chapter;
    - (b) a breach of a directly applicable provision imposed by *MiFIR* or any *onshored regulation* adopted under *MiFID* or *MiFIR*; and
    - (c) a breach of any requirement imposed by or under the *MiFI Regulations* which relates to this chapter.
  - (2) Notifications under (1) must be made immediately if the *person* becomes aware, or has information which reasonably suggests, that any of the breaches referred to in (1) have occurred, may have occurred or may occur in the foreseeable future.

**Notifications by unauthorised persons: non-financial entity exemption applications**

- 10.5.5 **G** ■ SUP 15.3.13G and ■ SUP 15.3.14G apply to notifications of an application by an *unauthorised person* for the *non-financial entity* exemption under regulation 17 of the *MiFI Regulations* as if the *person* is a *firm* to which ■ SUP 15.3.11R applies.

**Breaches of MAR 10 by authorised persons**

- 10.5.6 **G** *Firms* should refer to ■ SUP 15.3 (General notification requirements) generally, and in particular ■ SUP 15.3.11R, in respect of the following:
- (1) a breach of a *rule* or *direction* in this chapter;
  - (2) a breach of a directly applicable provision imposed by *MiFIR* or any *onshored regulation* adopted under *MiFID* or *MiFIR*; and
  - (3) a breach of any requirement imposed by or under the *MiFI Regulations* which relates to this chapter.

**Territoriality**

- 10.5.7 **G** The powers of the *FCA* referred to in ■ MAR 10.5.1G to ■ MAR 10.5.3G can be applied to a *person* regardless of whether the *person* is situated or operating in the *UK* or abroad, where the relevant position relates to a *commodity derivative* or *emission allowance* for which the *FCA* is responsible for setting a position limit, or *economically equivalent OTC contracts*.

**Decision and appeal procedures**

- 10.5.8 **G** The power of the *FCA* referred to in ■ MAR 10.5.2G is exercisable subject to the decision-making procedures in ■ DEPP 2 Annex 2G (Supervisory notices) (and other provisions in *DEPP*, as appropriate).