

Chapter 10

Commodity derivative position limits and controls, and position reporting

10.1 Application

Introduction

10.1.1

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- (1) The purpose of this chapter is to implement articles 57 and 58 of *MiFID* by setting out the necessary directions, *rules* and *guidance*.
- (2) In particular, this chapter sets out the *FCA*'s requirements in respect of provisions derived from:
 - (a) articles 57(1) and 57(6) of *MiFID*, which require it to establish limits, on the basis of a methodology determined by *ESMA*, on the size of a net position which a *person* can hold, together with those held on the *person's* behalf at an aggregate group level, at all times, in *commodity derivatives* traded on *trading venues* and *economically equivalent OTC contracts* to those *commodity derivatives*;

[**Note:** articles 3 and 4 of *MiFID RTS 21*]

 - (b) article 57(8) of *MiFID*, which requires *MiFID investment firms* and *market operators* operating a *trading venue* which trades *commodity derivatives* to apply position management controls;
 - (c) article 58(1) of *MiFID*, which requires *MiFID investment firms* and *market operators* operating a *trading venue* which trades *commodity derivatives* or *emission allowances* to provide the *competent authority* with reports in respect of such positions held; and
 - (d) article 58(2) of *MiFID*, which requires *investment firms* trading in *commodity derivatives* or *emission allowances* outside a *trading venue* to provide the *competent authority* with reports containing a complete breakdown of their positions held through such contracts traded on a *trading venue* and *economically equivalent OTC contracts*, as well as of those of their *clients* and the clients of those clients until the end client is reached.
- (3) The position limit requirements apply to both *authorised persons* and *unauthorised persons*. As such, the *MiFI Regulations* provide for a separate regulatory framework in relation to such *persons*. This framework is set out in:
 - (a) Part 3 of the *MiFI Regulations* ('Position limits and position management controls in commodity derivatives'); and
 - (b) Schedule 1 to the *MiFI Regulations* ('Administration and enforcement of Part 3, 4 and 5'), which provides for the administration and enforcement of position limits established by the *FCA*, and of the reporting of positions in *commodity*

derivatives, emission allowances and economically equivalent OTC contracts.

This chapter complements and adds to the regulatory framework in the *MiFI Regulations* by establishing the applicable position limits.

Scope and territoriality

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- (1) The scope of this chapter is as follows: In respect of position limit requirements in ■ MAR 10.2, a *commodity derivative* position limit established by the FCA in accordance with ■ MAR 10.2.2D(1) applies regardless of the location of the *person* at the time of entering into the position and the location of execution.

[Note: article 57(14)(a) of *MiFID*]

- (2) In respect of position management controls requirements:
 - (a) the requirements contained or referred to in ■ MAR 10.3 apply to *persons* operating a *trading venue* which trades *commodity derivatives* in respect of which the FCA is the *competent authority*; and
 - (b) in the case of a *UK branch* of a *third country investment firm* operating an *MTF* or *OTF*, ■ MAR 10.3 applies in the same way as it does to a *UK firm* operating a *multilateral trading facility* or an *OTF*.
- (3) In respect of position reporting requirements:
 - (a) the position reporting requirements in ■ MAR 10.4 apply to:
 - (i) a *regulated market*; and
 - (ii) a *UK firm* or a *UK branch* of a *third country investment firm* operating a *multilateral trading facility* or an *OTF*, when operating a *trading venue* which trades *commodity derivatives* or *emission allowances*; and
 - (b) the position reporting requirements in ■ MAR 10.4 apply to an *investment firm* regardless of its location at the time of entering into the position and the location of execution.

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Structure

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This chapter is structured as follows:

- (1) ■ MAR 10.1 sets out an introduction to ■ MAR 10, a description of the application of ■ MAR 10 to different categories of *person*, an explanation of the approach taken to the *UK* transposition of articles 57 and 58 of *MiFID*, the scope and territoriality of this chapter, and the structure of this chapter.
- (2) ■ MAR 10.2 sets out the position limit requirements.

- (3) ■ MAR 10.3 sets out the position management controls requirements.
- (4) ■ MAR 10.4 sets out the position reporting requirements.
- (5) ■ MAR 10.5 sets out other reporting, notification and information requirements.