

Chapter 10

Commodity derivative position limits and controls, and position reporting

10.2 Position limit requirements

Establishing, applying and resetting position limits

10.2.1

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- (1) The following provisions of the *MiFI Regulations* regulate the establishment, application and resetting of position limits:
 - (a) Regulation 16(1) imposes an obligation on the *FCA* to establish position limits in respect of *commodity derivatives* traded on *trading venues* in the *United Kingdom* and *economically equivalent OTC contracts*;
 - (b) Regulation 16(2) imposes an obligation on the *FCA* to establish position limits on the basis of all positions held by a *person* in the contract to which the limit relates and those held on the *person's* behalf at an aggregate group level;
 - (c) Regulation 16(4) imposes an obligation on the *FCA* to publish the position limits it establishes in a manner which the *FCA* considers appropriate;
 - (d) Regulation 18 imposes an obligation on the *FCA* to ensure that each position limit established by it specifies clear quantitative thresholds for the maximum size of a position in a *commodity derivative* that a *person* can hold;
 - (e) Regulation 19(1) imposes an obligation on the *FCA* to establish position limits in accordance with *ESMA's* methodology, unless an exceptional case exists under Regulation 25 of the *MiFI Regulations*;
 - (f) Regulation 19(2) imposes an obligation on the *FCA* to review position limits it has established in the presence of certain factors;
 - (g) Regulation 19(3) imposes an obligation on the *FCA* to establish a new position limit following its review if it believes that the limit should be reset;
 - (h) [deleted]
 - (i) [deleted]
 - (j) Regulation 23 imposes general obligations on the *FCA* in respect of the position limits it establishes, so that the limits must be transparent and non-discriminatory, specify how they apply to *persons*, and take account of the nature and composition of market participants and of the use they make of the contracts admitted to trading;
 - (k) Regulation 25(1) prohibits the *FCA* from establishing position limits which are more restrictive than permitted under *MiFID RTS 21* unless in exceptional cases where more restrictive position limits are objectively justified and proportionate;

- (l) Regulation 25(2) to Regulation 25(5) impose obligations on the *FCA* where it establishes position limits which are more restrictive than permitted under *MiFID RTS 21* in accordance with Regulation 25(1) of the *MiFI Regulations*. The obligations are that the *FCA* must publish that position limit on its website, and not apply that position limit for more than six *months* from the date of publication unless further subsequent six-month application periods for that limit are objectively justified and proportionate; and
- (m) [deleted]
- (n) Regulation 27 empowers the *FCA* to require a *person* to provide information on, or concerning, a position the *person* holds, or trades the *person* has undertaken, or intends to undertake, in a contract to which a position limit relates.

(2) *MiFID RTS 21* provides a methodology for the calculation of position limits on *commodity derivatives*, and rules for the calculation of the net position held by a *person* in a *commodity derivative*.

(a) *MiFID RTS 21* provides that the *FCA* can establish different position limits for different times within the spot month period or other months' period of a *commodity derivative*, and for the spot month period, those position limits shall decrease towards the maturity of the *commodity derivative*, and shall take into account the position management controls of *trading venues*.

[Note: article 57 of *MiFID*]

Application of position limits

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- (1) A *person* must comply at all times with *commodity derivative* position limits established by the *FCA*, published at www.fca.org.uk.
- (2) A direction made under (1) applies where a *commodity derivative* is traded on a *trading venue* in the *United Kingdom*.
- (3) Position limits established under (1) shall apply to the positions held by a *person* together with those held on its behalf at an aggregate group level (subject to the *non-financial entity* exemption in regulation 17(1) of the *MiFI Regulations*).
- (4) Position limits established under (1) shall apply regardless of the location of the *person* at the time of entering into the position.
- (5) Position limits established under (1) prior to 3 January 2018, will apply from 3 January 2018.

[Note: articles 57(1) and 57(14) of *MiFID*; and *MiFID RTS 21* in respect of *ESMA's* methodology for *competent authorities* to calculate position limits]

Non-financial entity exemption

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- (1) Regulation 17 of the *MiFI Regulations* regulates the position limit exemption applicable to positions in a *commodity derivative* held by or on behalf of a *non-financial entity* which are objectively measurable as reducing risks directly relating to the commercial

activity of that *non-financial entity*, and which is approved by the *FCA* in accordance with the relevant criteria and procedures. Regulation 17(1) imposes an obligation on the *FCA* to disregard such positions, when calculating the position held by such entities in respect of a *commodity derivative* to which a position limit applies.

- (2) Regulation 17(2) of the *MiFI Regulations* enables the *FCA* to receive applications from *non-financial entities* for the purposes of obtaining an exemption from the position limits which it sets and in such form as the *FCA* may direct.
- (3) *MiFID RTS 21* stipulates detail on positions qualifying as reducing risks directly related to commercial activities, and the application for the exemption from position limits.
- (4) *MiFID RTS 21* clarifies that a *non-financial entity* shall notify the *FCA* if there is a significant change to the nature or value of that *non-financial entity's* commercial activities, or its trading activities in *commodity derivatives*. The obligation arises where the change is relevant to the description of the nature and value of the *non-financial entity's* trading and positions held in *commodity derivatives* and their *economically equivalent OTC contracts* in a position limit exemption application it has already submitted. In this case, a *non-financial entity* must submit a new application if it intends to continue to make use of the exemption.

[Note: article 57(1) of *MiFID*]

Non-financial entity exemption application

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A *non-financial entity* must complete the application form in ■ MAR 10 Annex 1D for approval to be exempt from compliance with position limits established by the *FCA* in accordance with ■ MAR 10.2.2D(1).
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