

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).