

L.N. \_\_\_\_\_ of 2017

**FINANCIAL MARKETS ACT  
(CAP. 345)**

**INVESTMENT SERVICES ACT  
(CAP. 370)**

**Position Limits and Position Management Controls in Commodity Derivatives and Reporting Regulations, 2017**

IN exercise of the powers conferred by article 49 of the Financial Markets Act and article 12 of the Investment Services Act, the Minister for Finance, acting on the advice of the Malta Financial Services Authority, has made the following regulations:

Title and scope.

**1.** (1) The title of these regulations is the Position Limits and Position Management Controls in Commodity Derivatives and Reporting Regulations, 2017.

(2) The purpose of these regulations is to implement Article 57(1), (2), (4) to (6), (8) to (11), (13) and (14), Article 58(1) to (4), Article 69(2)(o) and (p) and Article 79(5) of MIFID as herein defined, and they shall be interpreted and applied accordingly.

Definitions.

**2.** (1) In these regulations unless the context otherwise requires:

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“the Acts” means the Financial Markets Act and the Investment Services Act;

“Central competent authority” means the regulatory authority of the trading venue where the largest volume of trading takes place;

“Directive 2009/65/EC” means Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provision relating to undertakings for collective investment in transferable securities (UCITS) as amended from time to time, and includes any implementing measures that have been or may be issued thereunder;

“Directive 2011/61/EC” means Directive 2011/61/EU of the

European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers, as amended from time to time, and includes any implementing measures that have been or may be issued thereunder;

“Directive 2009/138/EC” means Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II), as amended from time to time, and includes any implementing measures that have been or may be issued thereunder;

“Directive 2003/41/EC” means Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision, as amended from time to time, and includes any implementing measures that have been or may be issued thereunder;

Directive 2003/87/EC” means Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community, as amended from time to time, and includes any implementing measures that have been or may be issued thereunder;

“ESMA” means the European Securities and Markets Authority established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010;

“investment firm” means any legal person, other than persons to whom MiFID does not apply in terms of Article 2 of the said Directive, whose regular occupation or business is the provision of any one or more investment services to third parties on a professional basis;

“MiFID” means Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU, as amended from time to time, and includes any implementing measures that have been or may be issued thereunder;

“MiFIR” means Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments, as amended from time to time;

“Regulation (EU) No 1095/2010” means Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), as amended from time to time;

“Regulation (EU) No 1227/2011” means Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency, as amended from time to time;

“Regulation (EC) 713/2009” means Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators, as amended from time to time.

(2) Words and expressions used in the Acts shall, in these regulations, have the same meaning as is assigned to them in the Acts.

Position limits  
and position  
management  
controls in  
commodity  
derivatives.

**3.** (1) The competent authority shall, in line with the methodology for calculation determined by ESMA, establish and apply position limits on the size of a net position which a person can hold at all times in commodity derivatives traded on trading venues and economically equivalent OTC contracts.

(2) The limits referred to in subregulation (1) shall be set on the basis of all positions held by a person and those held on its behalf at an aggregate group level in order to:

- (a) prevent market abuse;
- (b) support orderly pricing and settlement conditions, including preventing market distorting positions, and ensuring, in particular, convergence between prices of derivatives in the delivery month and spot prices for the underlying commodity, without prejudice to price discovery on the market for the underlying commodity.

(3) Position limits shall not apply to positions held by or on behalf of a non-financial entity and which are objectively measurable as reducing risks directly relating to the commercial activity of that non-financial entity.

(4) Position limits shall specify clear quantitative thresholds for the maximum size of a position in a commodity derivative that persons can hold.

(5) The competent authority shall set limits for each contract in commodity derivatives traded on trading venues based on the methodology for calculation as determined by ESMA in the regulatory technical standards issued for that purpose in accordance with Article 57(3) of MiFID. The position limit shall include economically equivalent OTC contracts.

(6) The competent authority shall review position limits where there is a significant change in deliverable supply or open interest or any other significant change on the market, based on its determination of deliverable supply and open interest and reset the position limit in accordance with the methodology for calculation developed by ESMA.

(7) The competent authority shall notify ESMA of the exact position limits it intends to set in accordance with the methodology for calculation as established by ESMA in the regulatory technical standards issued for that purpose in accordance with Article 57(3) of MiFID.

(8) The competent authority shall modify the position limits in accordance with ESMA's opinion or provide ESMA with justification why the change is considered to be unnecessary:

Provided that where the competent authority imposes limits contrary to an ESMA opinion, it shall immediately publish on its website a notice fully explaining its reasons for doing so.

(9) Where the same commodity derivative is traded in significant volumes on trading venues in more than one jurisdiction and the largest volume of trading takes place in Malta, the competent authority shall set the single position limit to be applied on all trading in that contract. The competent authority shall consult the European regulatory authorities of other trading venues on which that derivative is traded in significant volumes on the single position limit to be applied and any revisions to that single position limit:

Provided that where the competent authority and the European regulatory authorities of the other trading venues do not agree, they shall state in writing the full and detailed reasons why they consider that the requirements prescribed in subregulations (1) to (3) are not met. ESMA will settle any dispute arising from a disagreement between competent authorities in accordance with its powers under Article 19 of Regulation (EU) No 1095/2010.

(10) Where the competent authority disagrees with the single position to be applied, in the case where the same commodity derivative is traded in significant volumes on trading venues in more than one jurisdiction and the largest volume of trading takes place outside Malta, it shall state in writing the full and detailed reasons why it considers that the requirements prescribed in subregulations (1) to (3) are not met:

Provided that ESMA will settle any dispute arising from a disagreement between the competent authority and the European regulatory authorities in accordance with its powers under Article 19 of Regulation (EU) No 1095/2010.

(11) Where the MFSA is the competent authority of the trading venue where the same commodity derivative is traded, it shall put in place cooperation arrangements including exchange of relevant data with the European regulatory authorities of the position holders in order to enable the monitoring and enforcement of the single position limit.

(12) Where the MFSA is the competent authority of the position holders in a commodity derivative which is traded on a trading venue, it shall put in place cooperation arrangements including exchange of relevant data with the European regulatory authority of the trading venue where the same commodity derivative is traded, in order to enable the monitoring and enforcement of the single position limit.

(13) A Maltese investment firm or market operator operating a trading venue which trades commodity derivatives shall apply position management controls. Those controls shall include at least, the powers for the trading venue to:

- (a) monitor the open interest positions of persons;
- (b) access information, including all relevant documentation, from persons about the size and purpose of a position or exposure entered into, information about beneficial or underlying owners, any concert arrangements, and any related assets or liabilities in the underlying market;
- (c) require a person to terminate or reduce a position, on a temporary or permanent basis as the specific case may require and to unilaterally take appropriate action to ensure the termination or reduction if the person does not comply; and
- (d) where appropriate, require a person to provide liquidity back into the market at an agreed price and volume on a temporary basis with the express intent of mitigating the effects of a large or dominant position.

(14) The position limits and position management controls shall be transparent and non-discriminatory, specifying how they apply to persons and taking account of the nature and composition of market participants and of the use they make of the contracts submitted to trading.

(15) The Maltese investment or market operator operating the trading venue shall inform the competent authority of the details of position management controls. The competent authority shall communicate the same information as well as the details of the position limits it has established to ESMA.

(16) The competent authority shall not impose limits which are more restrictive than those adopted pursuant to subregulations (1) to (3) except in exceptional cases where they are objectively justified and proportionate taking into account the liquidity of the specific market and the orderly functioning of that market.

(17) The competent authority shall publish on its website the details of the more restrictive position limits it decides to impose in accordance with subregulation (18), which shall be valid for an initial period not exceeding six months from the date of their publication on the website. The more restrictive position limits may be renewed for further periods not exceeding six months at a time if the grounds for the restriction continue to be

applicable. If not renewed after that six-month period, they shall automatically expire.

(18) Where the competent authority decides to impose more restrictive position limits, it shall notify ESMA. The notification shall include a justification for the more restrictive position limits.

Provided that where the competent authority imposes limits contrary to an ESMA opinion, it shall immediately publish on its website a notice fully explaining its reasons for doing so.

(19) The competent authority shall impose administrative penalties and other administrative measures in terms of regulation 7 for the infringements of position limits set in accordance with this regulation to:

- (a) positions held by persons situated or operating in Malta or abroad which exceed the limits on commodity derivative contracts the competent authority has set in relation to contracts on trading venues situated or operating in Malta or economically equivalent OTC contracts;
- (b) positions held by persons situated or operating in Malta which exceed the limits on commodity derivative contracts set by European competent authorities in other Member States or EEA States.

Position reporting by categories of position holders.

4. (1) A Maltese investment firm or a market operator operating a trading venue which trades commodity derivatives or emission allowances or derivatives thereof shall:

- (a) make public a weekly report with the aggregate positions held by the different categories of persons for the different commodity derivatives or emission allowances or derivatives thereof traded on their trading venue, specifying the number of long and short positions by such categories, changes thereto since the previous report, the percentage of the total open interest represented by each category and the number of persons holding a position in each category in accordance with sub-regulations (5) to (7) and communicate that report to the competent authority and to ESMA which in turn shall proceed to a centralised publication of the information included in such reports; and
- (b) provide the competent authority with a complete breakdown of the positions held by all persons, including the members or participants and the clients thereof, on that trading venue, at least on a daily basis.

(2) The Maltese investment firm or market operator operating a trading venue as referred to in subregulation (1) shall be required to provide the competent authority with the information referred to in subregulation

(1)(b) only when both the number of persons and their open positions exceed minimum thresholds.

(3) Maltese Investment firms trading in commodity derivatives or emission allowances or derivatives thereof outside a trading venue shall:

- (a) where the commodity derivatives or emission allowances or derivatives thereof are traded in Malta, provide the competent authority; or
- (b) where the commodity derivatives or emission allowances or derivatives thereof are traded outside Malta, provide the European regulatory authority; or
- (c) where the commodity derivatives or emission allowances or derivatives thereof are traded in significant volumes on trading venues in more than one jurisdiction, provide the central competent authority;

at least on a daily basis with a complete breakdown of their positions taken in commodity derivatives or emission allowances or derivatives thereof 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, in accordance with Article 26 of MiFIR and, where applicable, of Article 8 of Regulation (EU) No 1227/2011.

(4) In order to enable monitoring of compliance with regulation 3(1) to (3) of these regulations, members or participants of regulated markets, MTFs and clients of OTFs shall report to the investment firm or market operator operating that trading venue the details of their own positions held through contracts traded on that trading venue at least on a daily basis, as well as those of their clients and the clients of those clients until the end client is reached.

(5) Persons holding positions in a commodity derivative or emission allowance or derivative thereof shall be classified by the investment firm or market operator operating that trading venue according to the nature of their main business, taking account of any applicable authorisation, as either:

- (a) investment firms or credit institutions;
- (b) investment funds, either an undertaking for collective investments in transferable securities (UCITS) as defined in Directive 2009/65/EC, or an alternative investment fund manager as defined in Directive 2011/61/EC;
- (c) other financial institutions, including insurance undertakings and reinsurance undertakings as defined in Directive 2009/138/EC, and institutions for occupational retirement provision as defined

- in Directive 2003/41/EC;
- (d) commercial undertakings;
- (e) in the case of emission allowances or derivatives thereof, operators with compliance obligations under Directive 2003/87/EC.

(6) The reports referred to in subregulation (1)(a) shall specify the number of long and short positions by category of persons, any changes thereto since the previous report, percent of total open interest represented by each category, and the number of persons in each category.

(7) The reports referred to in subregulation (1)(a) and the breakdowns referred to in subregulation (3) shall differentiate between:

- (a) positions identified as positions which in an objectively measurable way reduce risks directly relating to commercial activities; and
- (b) other positions.

Powers of the competent authority.

**5. The competent authority may:**

- (a) request any person to take steps to reduce the size of the position or exposure; and
- (b) limit the ability of any person from entering into a commodity derivative, including by introducing limits on the size of a position any person can hold at all times in accordance with regulation 4 of these regulations.

Notifications.

**6. (1) The competent authority shall notify ESMA and other European regulatory authorities of the details of:**

- (a) any requests to reduce the size of a position or exposure pursuant to regulation 5(a) of these regulations;
- (b) any limits on the ability of persons to enter into a commodity derivative pursuant to regulation 5(b) of these regulations.

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(2) The notification shall include, where relevant, the details of the request or the demand pursuant to article 32 of the Financial Markets Act, and article 13 of the Investment Services Act, including the identity of the person or persons to whom it was addressed and the reasons therefor, as well as the scope of the limits introduced pursuant to regulation 5(b) including the person concerned, the applicable financial instruments, any limits on the size of positions the person can hold at all times, any exemptions granted thereto, and the reasons therefor in accordance with regulation 3 of these regulations and the reasons therefor.

(3) The notifications referred to in subregulation (2) shall be made not less than 24 hours before the actions or measures are intended to take effect. In exceptional circumstances, the competent authority may make the notification less than 24 hours before the measure is intended to take effect where it is not possible to give 24 hours' notice.

(4) Where the competent authority receives a notification from another

European regulatory authority pursuant to Article 79(5) of MiFID, it may take measures in accordance with regulation 5(a) or (b) where it is satisfied that the measure is necessary to achieve the objective of the other European regulatory authority.

(5) Where the competent authority proposes to take measures in accordance with regulation 5(a) or (b), it shall also give notice in accordance with the provisions of this regulation.

(6) When an action under subregulation (1)(a) or (b) relates to wholesale energy products, the competent authority shall also notify the Agency Cooperation of Energy Regulators (ACER) established under Regulation (EC) No 713/2009.

Administrative  
Penalties, other  
administrative  
measures and  
Appeals.

7. (1) Where a person falling within the scope of these regulations fails to comply with any provisions of such regulations or any rules issued thereunder further implementing such regulations, the competent authority may, by notice in writing and without recourse to a court hearing, impose on such person an administrative penalty and other administrative measures in accordance with the provisions of the Financial Markets Act (MiFID and MiFIR Administrative Penalties, Measures and Investigatory Powers) Regulations or the Investment Services Act (MiFID and MiFIR Administrative Penalties, Measures and Investigatory Powers).

(2) A right of appeal to the Financial Services Tribunal shall lie from the decisions which the competent authority shall take under these regulations and the provisions of Part VI of the Financial Markets Act or Article 19 of the Investment Services Act shall apply *mutatis mutandis*.