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MiFID II COMMODITIES POSITION REPORTING

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MIFID II COMMODITIES POSITION REPORTING

This document provides information regarding the position reporting requirements as set out in MiFID II.

The Markets in Financial Instruments Directive (MiFID), implemented in 2007, has been reformed by the European Commission to improve the functioning of financial markets in light of the financial crisis and to strengthen investor protection.

The legislation, comprising of a Directive (MiFID II) and a Regulation (MiFIR), came into effect on 3rd January 2018 and impacts commodity markets activity. These commodities related changes were drawn up in response to concerns as to excessive speculation and volatility in the commodities markets and the integrity of emissions trading.

Article 57 of MiFID II empowers National Regulators to require the reduction of positions in certain circumstances via the implementation of position limits on '*commodity derivatives or emission allowances or derivatives thereof traded on or outside a trading venue'.*

In order to enable monitoring of compliance with Article 57 of MiFID II by the National Competent Authority (NCA), Article 58 (3) of MiFID II requires members or participants of Regulated Markets ('RM'), Multilateral Trading Facilities ('MTF') and Organised Trading Facilities ('OTF') to report to the relevant Trading Venues ('TV') the details of their own positions held through contracts traded on those TV on a daily basis, as well as those of their clients and the clients of those clients, until the end client is reached.

Under Article 58(1) of MiFID II, the different TV will on their end provide daily and weekly reporting positions to their NCA and to ESMA.

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Article 58 (2) of MiFID II imposes upon Investment Firms trading in commodity derivatives or emission allowances or derivatives thereof outside of TV, to report their positions traded on TV and Economically Equivalent OTC (EEOTC) contracts, as well as the positions of their clients through to the end-client to the NCA. This will enables the NCA to aggregate positions and determine if a position holder is in breach of a position limit.

Due to the lack of practical clarity of the regulation and in order to find a feasible solution, reporting requirements under Article 58 of MiFID II have been discussed amongst commodity market participants and a general consensus has been reached regarding the approach to take.

Societe Generale ("SG") is implementing a solution in line with those main principles, namely that:

- The reporting obligation will be supported by the Clearing Member. This is the preferred approach, given the difficulties associated with an Executing Broker reporting client(s) positions. Based on this, SG will report only when operating as a Clearing Member.
- Client position reports will be made for the direct client of SG entities, where SG acts as a Clearing Member.

ESMA has defined a reporting template within Implementating Technical Standards no. 4 ('ITS4') on position reporting, in order to report directly to the NCAs under Article 58(1) and (2) of MiFID II and has also encouraged TV to implement the ITS4 reporting format when complying with Art 58 (3) of MiFID II.

Certain TV provide their own position reporting solutions, whereby clients may submit certain data directly to the TV for onward submission to the NCA's. See Appendix 1 of this communication which provides contact details for the TV in question, should you require further information linked to this offering.

Note that in order to comply with our regulatory obligations, SG will report positions regardless of whether a client reports its own positions directly to TV.

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What does this mean for clients ?

SG holds position information as Clearing Member for its clients. However, SG will require additional data from all clients, in order to comply with the position reporting obligation:

- **Static client data required**
  - Legal Entity Identifier (LEI)
  - Email address in order for the NCA to be able to send notifications of position-related matters. Without clear guidelines from ESMA, the market consensus is to require a compliance officer’s email address.
  - LEI and email address of the clients “ultimate parent entity”.
  - If the client ~~are~~ is a collective investment undertaking, they will need to confirm whether they make investment decisions independently from the parent undertaking.

What does this mean for clients? (cont.)

Non- Financial Entity (NFE) only

- Indicator of whether the position is risk reducing* in relation to its commercial activity.

This is amongst the new fields to be reported. **A NFE client will be required to categorise its positions as either Risk Reducing ("Hedge") or Speculative ("Spec") or a combination of both whereas Financial Entities may only hold positions as Spec.** As a result, a NFE may have to report both Hedge and Spec positions for the same contract maturity.

Note that the MiFID categorisation may differ from other regulatory categories.

In accordance with Article 7 of the Commission Delegated Regulation (EU) 2017/591.

For the purposes of MiFID II Commodity Position Reporting, SG will regard a NFE as the inverse of a Financial counterparty as defined within Article 2(8) EMIR, i.e. a NFE is the same as a non-financial counterparty under EMIR.

See paragraphs 61. & 62. of ESMA Final Report Draft Regulatory and Implementing Technical Standards MiFID II/MiFIR
https://www.esma.europa.eu/sites/default/files/library/2015/11/2015-esma-1464_-_final_report_-_draft_rts_and_its_on_mifid_ii_and_mifir.pdf

The meaning of NFE is located within Article 2(1) of the Commission Delegated Regulation (EU) 2017/591 of 1 December 2016

https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R0591&from=EN

Article 7 of the Commission Delegated Regulation (EU) 2017/591 limits the use of the Hedge indicator to NFE. The key point in respect of NFE is that position limits do not apply to positions held which are objectively measurable as reducing risks directly related to the commercial activity of that non-financial entity.

N.B. Under Article 57 of MiFID II, NFE can apply for position limit exemptions when dealing for risk-reduction purposes, provided they have previously obtained authorisation from the NCA on the markets they trade on.

SG's solution to qualify clients positions as Hedge or Spec

SG will apply the Hedge* or Spec category at clearing account/sub-account level.

As advised by all Client(s):

- If dealing only for speculative purpose, SG will flag all activity as Spec.

NFE clients only

- If dealing only for risk-reduction purposes, SG will flag all activity as Hedge
- If dealing for both risk-reduction and speculative purposes SG will require an indication of which accounts/will be flagged as Spec and which will be Hedge
  - Note that this may require modification to the existing account–structure to allow for Hedge or Spec segregation (should the applicable account structure not already exist).
  - A default value of Hedge or Spec can be provided by clients which will be coded into SG's internal systems in order to add the applicable flag to:
    - any existing accounts that are as yet unspecified as risk-reducing or speculative.
    - trades which are unallocated by SGs advised cut-off time

Note that unless advised in the alternative, the SG default value (Spec) will be applied.

**NFE clients only*

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Operational impacts for clients* trading in both type of activities:

- Clients who require amendments to their account structure, should discuss this with their SG contacts, in order to open and qualify any new or existing accounts.
- The client allocation process (i.e. pre or post trade) will remain the same. Any Clients who require amendment to their existing trade allocation process, should discuss this with their SG contacts.
- Allocation of trades will be required by and in accordance with the relevant Exchange clearing times**. To ensure accurate allocation between Hedge and Spec designated accounts:
    - Pre-trade allocation applied to the order, or by static data relating to the product, market, etc. where applicable

  Or

    - Post trade allocation by the uploading of an allocation file, into a pre-agreed format.

Note that unless advised in the alternative, unallocated trades will be aggregated to the SG default value (Spec).

Trade reallocation after the relevant Exchange clearing time has ceased, may result in an updated position being reported to the TV the following day.

**NFE clients only*

***Which may vary by Exchange and product.*

APPENDIX 1 - TRADING VENUE REPORTING INFORMATION

ICE Futures Europe and ICE Endex

- **MiFID II Position Reporting**

https://www.fia.org/sites/default/files/2019-09/ICE_MiFID_II_EU_Position_Reporting_20170817_Final.pdf

Reporting Entities (RE) which may include non-Members which are either reporting Reportable Positions directly or on behalf of their clients to ICE.

- **MIFID II Position Reporting Guidance**

https://www.theice.com/publicdocs/circulars/17183_attach_1.pdf

RE that currently do not have access to ICE MFT will need to contact ComplianceEurope@theice.com for the initial setup and complete the request form contained within the link enc.

https://www.theice.com/publicdocs/circulars/17183_attach_3.pdf

EEX

- **Position Reporting**

https://www.eex.com/en/regulatory-reporting-services/mifid2-mifir/reporting-services/position-reporting

LME

- **MiFID II – Clients of Members**

https://www.lme.com/en-GB/About/Market-Regulation/MiFID-II/Clients#tabIndex=0

‘Position limits’ section

APPENDIX 2 - USEFUL READING

ESMA

- **POSITION LIMITS UNDER MIFID II**

https://www.esma.europa.eu/press-news/esma-news/esma-agrees-first-position-limits-under-mifid-ii
https://www.esma.europa.eu/press-news/esma-news/esma-agrees-mifid-ii-position-limits-proposed-fca

- **Questions and Answers on MiFID II and MiFIR commodity derivatives topics**

https://www.esma.europa.eu/press-news/esma-news/esma-updates-mifid-ii-qa-commodity-derivatives

FCA

- **MiFID II web page**

https://www.fca.org.uk/markets/mifid-ii

- **Commodity derivatives: introduction of position limits and reporting regime**

https://www.fca.org.uk/markets/mifid-ii/commodity-derivatives

- **Position limits for commodity derivative contracts**

Link below to the commodity derivative contracts that the FCA have currently identified as trading on a UK trading venue which, from 3 January 2018, will have a bespoke position limit set against them. Any other commodity derivatives not listed and traded on a UK trading venue (but not traded in significant volumes on a venue in another Member State) will, from 3 January 2018, be subject to a limit of 2,500 lots.

https://www.fca.org.uk/markets/mifid-ii/commodity-derivatives/position-limits
Nb. This list will be subject to change and the FCA encourages clients to check it regularly for updates.

APPENDIX 2 - USEFUL READING

FCA (cont)

- **Commodity position limit exemptions**

The FCA Connect online system, is now open for exemption application submissions by Non-financial entities. https://www.fca.org.uk/firms/connect
Nb. System registration required

Link to FCA Connect New User Registration Page https://connect.fca.org.uk/firms/AuPo_CustomSiteRegisterPage

- **Position limit exemptions**

To view the current format of the position limit exemption form and to read the guide to completing the commodity position limit exemption application, please see the ‘Position limit exemptions’ section of the FCA’s dedicated ‘Commodity derivatives: introduction of position limits and reporting regime’ (link previously supplied).

- **Q&As MiFID II commodity derivatives**

https://www.fca.org.uk/publication/minutes/mifidii-commodity-derivatives-qa.pdf

- **Update to MiFID II notifications obligation for firms**

https://www.fca.org.uk/markets/mifid-ii/applications-notifications

APPENDIX 2 - USEFUL READING

AMF

- **Position limits on commodity derivative contracts**

https://www.amf-france.org/en/news-publications/news/amf-sets-position-limits-positions-commodity-derivative-contracts

- **Position limits and Hedging exemption**

To enable eligible clients to notify the AMF of a MiFID II ancillary activities exemption and for those clients who intend to apply for a position limits hedging exemption, the AMF has published details of the process to be followed (with linked application forms) on their website.

https://www.amf-france.org/en/node/61048

Nb. Investment firms are not able to apply for the position limits hedging exemption.

- Completed application forms should be sent to exemption.couverture@amf-france.org

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