

## STATUTORY INSTRUMENTS

# 2017 No. 701

## The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017

### PART 3

#### Position limits and position management controls in commodity derivatives

##### FCA duty to establish position limits

**16.**—(1) The FCA must, by giving directions, establish position limits in respect of commodity derivatives traded on trading venues in the United Kingdom and economically equivalent over the counter contracts.

(2) The FCA must establish position limits under paragraph (1) 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 in order to—

- (a) prevent market abuse; and
- (b) support orderly pricing and settlement conditions, which includes, but is not restricted to—
  - (i) preventing market distorting positions; and
  - (ii) ensuring convergence between prices of commodity 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) The FCA must determine if a position is held at an aggregate group level for the purpose of paragraph (2) in accordance with the relevant methods.

(4) Position limits established by the FCA under this regulation must be published in a manner the FCA considers appropriate.

(5) In this regulation—

[<sup>F1</sup>“ group ” means a parent undertaking and all its subsidiary undertakings, and for these purposes, “parent undertaking” and “subsidiary undertaking” have the same meanings as in section 420 of the Act;]

“the relevant methods” means the methods determined by [<sup>F2</sup>Article 4 of Regulation (EU) 2017/591.]

##### Textual Amendments

**F1** Words in [reg. 16\(5\)](#) substituted (31.12.2020) by [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), [regs. 1\(3\)](#), [8\(9\)\(a\)](#) (with savings in [S.I. 2019/680](#), [reg. 11](#)); [2020 c. 1](#), [Sch. 5 para. 1\(1\)](#)

**F2** Words in [reg. 16\(5\)](#) substituted (31.12.2020) by [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), [regs. 1\(3\)](#), [8\(9\)\(b\)](#) (with savings in [S.I. 2019/680](#), [reg. 11](#)); [2020 c. 1](#), [Sch. 5 para. 1\(1\)](#)

**Status:** Point in time view as at 31/12/2020.

**Changes to legislation:** The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017, PART 3 is up to date with all changes known to be in force on or before 24 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

## Exemption for non-financial entities

17.—(1) The calculation of the size of a position a person holds for the purposes of regulation 16(2) must not include a position which is—

- (a) held by or on behalf of a non-financial entity;
- (b) objectively measurable as reducing risks directly relating to the commercial activity of that non-financial entity; and
- (c) approved by the FCA in accordance with—
  - (i) the relevant criteria and methods; and
  - (ii) the relevant procedure.

(2) An application to the FCA for approval under paragraph (1)(c) must—

- (a) be made in such manner as the FCA may direct; and
- (b) contain or be accompanied by such information as the FCA may reasonably require for the purpose of determining the application.

(3) At any time after receiving an application and before determining it the FCA may require the applicant to provide the FCA with such further information as the FCA reasonably considers necessary to enable the FCA to determine the application.

(4) The FCA may give different directions, and may impose different requirements, in relation to different applications.

(5) In this regulation—

“the relevant criteria and methods” means the criteria and methods determined by [<sup>F3</sup>Article 7 of Regulation (EU) 2017/591; and]

“the relevant procedure” means the procedure determined by [<sup>F4</sup>Article 8 of Regulation (EU) 2017/591.]

### Textual Amendments

**F3** Words in [reg. 17\(5\)](#) substituted (31.12.2020) by [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), [regs. 1\(3\)](#), **8(10)(a)** (with savings in [S.I. 2019/680](#), [reg. 11](#)); [2020 c. 1](#), [Sch. 5 para. 1\(1\)](#))

**F4** Words in [reg. 17\(5\)](#) substituted (31.12.2020) by [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), [regs. 1\(3\)](#), **8(10)(b)** (with savings in [S.I. 2019/680](#), [reg. 11](#)); [2020 c. 1](#), [Sch. 5 para. 1\(1\)](#))

## Content of position limits

18. A position limit established by the FCA under regulation 16 must specify clear quantitative thresholds for the maximum size of a position in a commodity derivative that a person can hold.

### FCA duty to use [<sup>F5</sup>Regulation (EU) 2017/591] to establish position limits and to review if market changes

19.—(1) The FCA must, unless regulation 25 applies, establish position limits under regulation 16 in accordance with [<sup>F6</sup>Regulation (EU) 2017/591].

(2) The FCA must review a position limit it has established under regulation 16 where there is—

- (a) a significant change in deliverable supply or open interest; or

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(b) any other significant change on the market, based on the FCA's determination of deliverable supply or open interest.

(3) Where following a review the FCA believes that the position limit should be reset it must establish a new position limit under regulation 16.

**Textual Amendments**

- F5** Words in [reg. 19](#) heading substituted (31.12.2020) by [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), [regs. 1\(3\)](#), **8(11)(a)** (with savings in [S.I. 2019/680](#), [reg. 11](#)); [2020 c. 1, Sch. 5 para. 1\(1\)](#)
- F6** Words in [reg. 19\(1\)](#) substituted (31.12.2020) by [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), [regs. 1\(3\)](#), **8(11)(b)** (with savings in [S.I. 2019/680](#), [reg. 11](#)); [2020 c. 1, Sch. 5 para. 1\(1\)](#)

**ESMA opinions on position limits**

**F7 20.** . . . . .

**Textual Amendments**

- F7** [Regs. 20-22](#) omitted (31.12.2020) by virtue of [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), [regs. 1\(3\)](#), **8(12)** (with savings in [S.I. 2019/680](#), [reg. 11](#)); [2020 c. 1, Sch. 5 para. 1\(1\)](#)

**Position limits affecting multiple EEA jurisdictions**

**F7 21.** . . . . .

**Textual Amendments**

- F7** [Regs. 20-22](#) omitted (31.12.2020) by virtue of [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), [regs. 1\(3\)](#), **8(12)** (with savings in [S.I. 2019/680](#), [reg. 11](#)); [2020 c. 1, Sch. 5 para. 1\(1\)](#)

**Cooperation with other competent authorities regarding position limits affecting multiple EEA jurisdictions**

**F7 22.** . . . . .

**Textual Amendments**

- F7** [Regs. 20-22](#) omitted (31.12.2020) by virtue of [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), [regs. 1\(3\)](#), **8(12)** (with savings in [S.I. 2019/680](#), [reg. 11](#)); [2020 c. 1, Sch. 5 para. 1\(1\)](#)

**General requirements for position limits**

**23.** Position limits established by the FCA under regulation 16 must be—

- (a) transparent and non-discriminatory;

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- (b) specify how they apply to persons; and
- (c) take account of the nature and composition of market participants and of the use those market participants make of the contracts admitted to trading.

**FCA duty to notify ESMA of established position limits and position management controls**

<sup>F8</sup>24. ....

**Textual Amendments**

**F8** Reg. 24 omitted (31.12.2020) by virtue of *The Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018* (S.I. 2018/1403), regs. 1(3), **8(12)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

**Procedure in exceptional cases**

25.—(1) The FCA may establish a position limit under regulation 16 which is more restrictive than would be permitted by [<sup>F9</sup>Regulation (EU) 2017/591] (“a more restrictive position limit”) in exceptional cases, if the position limit is objectively justified and proportionate taking into account—

- (a) the liquidity of the specific market; and
- (b) the orderly functioning of that market.

(2) Where the FCA establishes a more restrictive position limit the FCA must publish that position limit on its website.

(3) The FCA must not impose a more restrictive position limit for a period of more than six months from the day it is published under paragraph (2).

(4) But the FCA may impose the more restrictive position limit for further periods of no more than six months each if the position limit continues to be objectively justified and proportionate taking into account the matters mentioned in paragraph (1)(a) and (b).

<sup>F10</sup>(5) .....

<sup>F10</sup>(6) .....

<sup>F10</sup>(7) .....

**Textual Amendments**

**F9** Words in reg. 25(1) substituted (31.12.2020) by *The Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018* (S.I. 2018/1403), regs. 1(3), **8(13)(a)** (as amended by S.I. 2019/710, regs. 1(2), 16(5) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

**F10** Reg. 25(5)-(7) omitted (31.12.2020) by virtue of *The Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018* (S.I. 2018/1403), regs. 1(3), **8(13)(b)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

**Effect of position limits established by the FCA <sup>F11</sup>...**

26.—(1) A person must not hold a position which is in excess of a position limit established under regulation 16, regardless as to whether the person is in the United Kingdom or not.

<sup>F12</sup>(2) .....

### Textual Amendments

- F11** Words in [reg. 26](#) heading omitted (31.12.2020) by virtue of [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **8(14)(a)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F12** [Reg. 26\(2\)](#) omitted (31.12.2020) by virtue of [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **8(14)(b)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

### FCA power to require information

**27.**—(1) The FCA may, in such manner as it may direct, require a person to provide information on, or concerning—

- (a) a position the person holds in a relevant commodity derivative or over the counter contract; or
- (b) trades a person has undertaken, or intends to undertake, in a relevant commodity derivative or over the counter contract.

(2) The FCA may, in such manner as it may direct, require the operator of a trading venue to provide information on, or concerning, trades a person has undertaken, or intends to undertake in a relevant commodity derivative or over the counter contract.

(3) In this regulation a commodity derivative or over the counter contract is relevant if the FCA—

- (a) has established a position limit under regulation 16 in respect of that derivative or contract; or
- (b) is considering whether it is required to establish or modify a position limit in respect of that derivative or contract under regulation 16.

### FCA power to intervene

**28.**—(1) If the FCA considers it necessary for the purpose of the exercise by the FCA of functions under [<sup>F13</sup>these Regulations] or the markets in financial instruments regulation the FCA may—

- (a) limit the ability of a person to enter into a contract for a commodity derivative;
- (b) restrict the size of a position a person may hold; or
- (c) require a person to reduce the size of a position held.

(2) The FCA may exercise the power under paragraph (1) notwithstanding that the limitation, restriction, or reduction would be more restrictive than a position limit established by the FCA under regulation 16 <sup>F14</sup>...

(3) Paragraph (1) applies regardless as to whether the person is in the United Kingdom or not where the position relates to a commodity derivative traded on a trading venue established in the United Kingdom or an economically equivalent over the counter contract.

(4) If the FCA imposes a limitation, restriction, or requirement under paragraph (1) it must issue a notice to the person.

(5) A person on whom a limitation, restriction or reduction has been imposed under paragraph (1) may refer that matter to the Tribunal.

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#### Textual Amendments

- F13** Words in [reg. 28\(1\)](#) substituted (31.12.2020) by [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **8(15)(a)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F14** Words in [reg. 28\(2\)](#) omitted (31.12.2020) by virtue of [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **8(15)(b)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

### Cooperation with ESMA and other competent authorities in respect of interventions to restrict, reduce, or limit positions

<sup>F15</sup>**28A.** . . . . .

#### Textual Amendments

- F15** [Reg. 28A](#) omitted (31.12.2020) by virtue of [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **8(16)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

### Interpretation of Part 3

**29.**—(1) In this Part an over the counter contract is economically equivalent to a commodity derivative if it satisfies the criteria set out in [<sup>F16</sup>Article 6 of Regulation (EU) 2017/591.]

(2) In this Part—

<sup>F17</sup> ...

<sup>F18</sup> ...

“position” means a net position in a commodity derivative traded on a trading venue in an EEA State and any economically equivalent over the counter contract that has been calculated in accordance with the methodology determined by [<sup>F19</sup>Articles 3 and 4 of Regulation (EU) 2017/591;]

“position limit” means a limit on the maximum size of a position which a person may hold at any time; and

[<sup>F20</sup>“significant volumes” has the meaning given by [<sup>F21</sup>Article 5 of Regulation (EU) 2017/591].]

“trading venue” has the meaning given in regulation 2 but also includes a facility mentioned in—

- (a) paragraph (b) of the definition of “multilateral trading facility” in article 3(1) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 <sup>M1</sup>; or
- (b) paragraph (b) of the definition of “organised trading facility” in that article.

#### Textual Amendments

- F16** Words in [reg. 29\(1\)](#) substituted (31.12.2020) by [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **8(17)(a)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

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- F17** Words in reg. 29(2) omitted (31.12.2020) by virtue of [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **8(17)(b)(i)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F18** Words in reg. 29(2) omitted (31.12.2020) by virtue of [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **8(17)(b)(ii)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F19** Words in reg. 29(2) substituted (31.12.2020) by [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **8(17)(b)(iii)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F20** Words in reg. 29(2) inserted (2.1.2018) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) \(No.2\) Regulations 2017 \(S.I. 2017/1255\)](#), regs. 2(a), **25**
- F21** Words in reg. 29(2) substituted (31.12.2020) by [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **8(17)(b)(iv)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

### Marginal Citations

- M1** [S.I. 2001/544](#); article 3(1) was amended by [S.I. 2006/3384](#), there are other amendments but none is relevant.

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