
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

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 the ESMA methodology mentioned in regulation 19(1) (“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).

(5) The FCA must notify ESMA if it establishes a more restrictive position limit and the notification must include a justification for establishing a more restrictive position limit.

(6) If the FCA establishes, or continues to apply a more restrictive position limit that is incompatible with an opinion issued by ESMA the FCA must publish a notice without undue delay on the FCA’s official website a notice explaining its reasons for doing so.

(7) In this regulation “opinion issued by ESMA” means an opinion issued by ESMA for the purposes of Article 57.13 (position limits and position management controls in commodity derivatives) of the markets in financial instruments directive stating that it considers a more restrictive position limit is not necessary to address an exceptional case.