FINANCIAL CONDUCT AUTHORITY

Policy Statement
PS25/1

Reforming the commodity derivatives regulatory framework

February 2025

This relates to

Consultation Paper 23/27 which is available on our website at www.fca.org.uk/publications

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Chapter 1

Summary

1.1 The UK has some of the largest commodity derivatives markets in the world. They provide benchmarks for the pricing of commodities internationally as well as serving the risk management needs of a wide range of market participants, including producers of commodities.

1.2 The purpose of the commodity derivatives regulatory framework is to mitigate the risk that large positions, including those arising from abusive practices, can cause disorderly pricing or settlement conditions. This seeks to ensure that those markets remain resilient under a variety of market conditions and continue to provide robust reference prices for commodities globally.

1.3 In December 2023 we published the Consultation Paper (CP) 23/27 "Reforming the commodity derivatives regulatory framework".

1.4 The consultation covered the key pillars of the regime: position limits, exemptions from those limits, position management controls, the position reporting regime and the ancillary activities test.

1.5 In line with the commitments made in the Wholesale Markets Review (WMR), as delivered through FSMA 2023, the consultation included changes aimed at transferring certain responsibilities to trading venues. For example, instead of setting position limits ourselves, our proposed rules set out a framework within which trading venues would need to establish those limits. Trading venues are closest to the markets they operate and are well placed to set and administer controls appropriate for the features those markets, within a clear regulatory framework.

1.6 Our consultation proposals also sought to learn from events over recent years, when commodity markets have experienced periods of instability and extreme volatility, which transmitted to other parts of the financial system. To strengthen the resiliency of UK commodity markets in periods of stress, it is important that trading venues have adequate visibility of the risks to their markets before they lead to harm. In that context, we proposed new requirements aimed at enhancing the early identification of those risks by trading venues through the reporting of firms' over-the-counter (OTC) derivatives positions.

1.7 We also recognise that, to operate in an effective way, the rules that apply to commodity derivatives markets must be proportionate to the risk they intend to mitigate. We proposed a simplification of the regime by applying position limit and related requirements to a narrower set of critical contracts for which disorderly trading would have the largest impact on the users of markets. By excluding the majority of commodity derivatives from position limits, we would reduce unnecessary costs to firms and align with best international practices.

1.8 Commodity derivatives markets are, ultimately, aimed at supporting the hedging of risks, especially by firms who are producers or users of commodities. Our proposed rules introduced new types of exemptions that should support the hedging needs of firms by providing them with greater access to liquidity.

1.9 This Policy Statement (PS) summarises the feedback received on CP23/27 and sets out our response and final position on the rules and guidance to be included in the FCA Handbook.

1.10 A key theme raised by respondents was that the markets in contracts we deemed critical possess distinct characteristics and present different risks. Accordingly, it was suggested that different arrangements may be needed across these markets to achieve the outcomes we seek. In our final rules, we recognise the heterogeneity of commodity markets by providing trading venue operators with greater discretion, in certain areas, to determine the arrangements necessary to safeguard the orderliness of their market. That discretion will need to be exercised with reference to criteria we have set, to ensure that arrangements deliver sufficient risk monitoring and mitigation.

1.11 As an important example, we have amended the rules on which we consulted in relation to the reporting of positions held OTC by trading venues' members and their clients in response to feedback.

1.12 Our final rules require trading venues to have the power to collect data on OTC positions, but also set out how that power can be exercised differently, depending on the risks and characteristics of the specific market. We will allow a substantial implementation period before our rules come into effect, during which we will assess the arrangements proposed by relevant trading venue operators. We would expect there to be some markets where periodic reporting of OTC positions is necessary, to enable oversight of related futures markets. Our changes are further supported by changes in legislation that Treasury has committed to make.

1.13 We also made targeted changes to other parts of the proposals in the consultation, to incorporate technical feedback received to improve the practical implementation of our rules while maintaining the intended standards of market integrity.

1.14 For example, on the scope of position limits we have revised our rules in relation to the definition of related contracts for which members and clients will need to aggregate their positions with those in the relevant critical contract.

1.15 We also provide trading venues with discretion to establish accountability thresholds in contracts other than the spot months, but position limits will continue to apply to both spot and other months for critical contracts.

1.16 An overview of our original proposals, the feedback received, and the final rules can be found in Chapter 2 on the wider context. Each of the relevant sections in this PS provide a detailed discussions of the feedback received and how we responded to it.

1.17 Our final rules and guidance remain focused on ensuring that the regime is sufficiently robust and agile to respond to swiftly changing market events and improve trading venues' ability to identify risk through additional data reporting, including of OTC data, where appropriate. The revised framework strengthens UK commodity derivatives markets so that they can continue to serve their users, in the UK and globally.

Technical changes to bond and derivatives transparency rules

1.18 In November 2024 we published PS 24/14: Improving transparency for bonds and derivatives markets. This included transitional provisions which came into effect on 1 December 2024. Following helpful comments on those provisions from market participants we are making some small clarifications, as set out in Chapter 9, to put beyond doubt how the transitional provisions are intended to operate.

Who this applies to

1.19 This PS will be of interest to:

- trading venues in the UK which admit to trading commodity derivatives
- persons, commercial users and financial firms who trade commodity derivatives in the UK
- central counterparties (CCPs) clearing commodity derivatives
- trade associations
- other persons, such as non-governmental organisations that have participated in public policy debates on the commodity derivatives regulatory regime and those that manage infrastructure through which futures contract deliveries are made

Chapter 2

The wider context

Background

2.1 The commodity derivatives regulatory regime aims to implement proposals included in the conclusions of G20 meetings in 2009 and 2011 to improve the regulation, functioning and transparency of commodity derivatives markets. The regulatory framework applicable to commodity derivatives reflects the key differences between those instruments and other financial markets.

2.2 When commodity derivatives markets are disorderly, their prices may diverge from market fundamentals of supply and demand for the underlying commodity. Divergence can occur not only in the delivery month, which is generally most exposed to the risk from large positions, but also in other months.

2.3 This reduces the effectiveness of those markets to serve non-financial users' hedging needs and negatively affects the price of underlying physical commodities. This has negative consequences outside financial markets.

2.4 The pillars of the commodity derivatives regime are:

- Position limits – The maximum net position that any participant can assume in the market. They aim to mitigate the risk of an abusive squeeze and other abusive practices.
- Exemptions – The circumstances under which firms' positions are exempt from position limits. Currently an exemption is available to producers and consumers of commodities who use derivatives to hedge risks that arise from the future sale or purchase of the commodity.
- Position management controls – The set of arrangements and powers trading venues are required to use to mitigate the risk that large positions may lead to disorderly trading and settlement conditions.
- Position reporting – The reporting regime that allows trading venues and regulators to identify large positions and to monitor risks.
- The ancillary activities test – The test that provides an exemption from authorisation which non-financial firms, such as commercial producers, can benefit from under certain circumstances.

2.5 CP23/27 followed on from work we did with the Treasury on the WMR. The Treasury published a Consultation Response in March 2022 as part of this work, which stated that most respondents supported the following reforms:

- To revoke the requirement that position limits apply to all commodity derivatives traded on a trading venue and to economically equivalent OTC contracts.
- To require trading venues to set the levels of position limits for contracts specified by the FCA.

- To establish new exemptions from position limits for liquidity providers and for financial firms offering risk-mitigation services to non-financial clients.
- To modify the ancillary activities test, by revoking the current test and reintroducing a qualitative test, and to remove the related annual notification.

2.6 Market events over recent years have shown that extreme volatility can threaten the orderliness of the markets and heighten liquidity risks. Disorderly markets prevent market participants from hedging risk and from using commodity derivatives prices as a benchmark for the underlying markets. Where these risks are not adequately managed, they can also transmit through the wider financial system, such as to CCPs, clearing members and bilateral counterparties through margin requirements. We remain of the view that to maintain orderly markets disclosure of OTC positions is necessary in certain commodity derivatives, albeit the relevant requirements need to be carefully calibrated.

2.7 The proposals in CP23/27 sought to bring together the reforms set out in paragraph 2.5 with changes that are necessary to address risks that have contributed to specific market events. For this reason, and in line with industry feedback, we intend to strengthen the regime in additional ways to those proposed under the WMR, such as in respect of enhanced reporting of OTC positions.

2.8 Our new rules are in line with best international practices and take into account the 2023 IOSCO Principles for the Regulation and Supervision of Commodity Derivatives Markets ('IOSCO Principles' henceforth) and regimes in other jurisdictions, including the United States (US) and the European Union (EU).

2.9 The aim of the regime is to support orderly pricing and settlement conditions and to mitigate the risk of market abuse. A more robust regime will strengthen confidence, which supports participation in commodity derivatives markets and ultimately liquidity and efficient price formation. We have also made changes, through the exemption's regime, aimed at ensuring that commodity derivatives markets work for commercial users who need to hedge their risks. This would also support liquidity.

2.10 There is one instrument accompanying this PS comprising mainly changes to MAR 10 and consequential changes to a Handbook module, sourcebook and guides as well as a standards instrument confirming we are not revoking UK version of Commission Delegated Regulation 2017/592 (referred to in the Handbook as MiFID RTS 20) for the time being. These changes broadly create a one-stop regulatory source of requirements to streamline the current complex structure of rules under a directive supported by delegated regulations, regulatory and implementing technical standards.

2.11 In light of the update we published on the ancillary activities test on 30 May 2024, there is no related standards instrument revoking the relevant technical standards as proposed in CP23/27. This is explained further in Chapter 8.

How it links to our objectives

Market integrity

2.12 Our final rules and guidance are primarily aimed at ensuring that the UK's commodity derivatives markets remain resilient and orderly under a variety of market conditions and firms can continue to operate in these markets with confidence. Those are important constituents of market integrity.

2.13 Commodity derivatives markets can be susceptible to market abuse and disorderly trading. These risks are exacerbated during times of market stress, and they can transmit through the wider financial system if not adequately managed. Strengthened reporting requirements is crucial to ensuring relevant trading venues have effective market oversight. This information allows identification of risks and potential spillover effects from related markets into derivatives markets operated by trading venues.

2.14 Further, accountability thresholds are a position management tool that provide relevant trading venues with early warning of growing positions in relevant contracts so that the trading venue can understand whether risks are emerging and what actions should be taken to manage that risk.

2.15 We therefore expect that the new regulatory framework will strengthen the integrity of the UK financial system.

Consumer Protection

2.16 Our work does not engage directly with the consumer protection objective. However, we have had regard to ensuring that relevant markets continue to serve the needs of end users like commercial firms. Most users of these markets are financial services firms or commercial firms involved in the extraction, production, distribution, consumption and trading of the underlying commodities rather than individuals. The users of these markets, and by extension consumers who are the end users of basic commodities, have an interest in UK commodity derivatives markets that are fair, transparent and operate with integrity. Our final changes support this by permitting relevant position limit exemptions to ensure commercial users can hedge their risks, which in turn support liquidity provision. In addition, they ensure relevant trading venues are able to operate their position management controls effectively through strengthened disclosure requirements by firms, where necessary.

Competition

2.17 The UK is home to global reference markets for certain commodities such as oil and non-ferrous metals. While the primary driver of our proposed reforms is not to advance our competition objective, our rules affect market participants globally and how they compete in our markets. In developing our framework, we have had regard to ensuring that relevant markets continue to remain open and liquid. One of the final changes is to introduce exemptions from position limits for liquidity providers and for financial firms

providing risk-mitigation services to non-financial firms hedging their commercial risk, which in times of market stress can become significantly important. Market liquidity supports competition and efficiency.

Secondary International Competitiveness and Growth Objective

2.18 The Financial Services and Markets Act (FSMA) 2023 introduced a secondary objective to facilitate the international competitiveness of the UK economy, and its medium to long-term growth, subject to aligning with relevant international standards, when advancing our primary objectives.

2.19 We consider that our final rules and proposals support international competitiveness and growth of the UK in various ways:

- By strengthening the regulatory framework to make it more resilient we promote market stability and increase trust which helps increase participation in UK markets and liquidity in commodity derivatives.
- By removing obligations that don't promote market integrity in an effective way (for example, by removing the obligation to apply position limits to all commodity derivatives contracts traded on UK trading venues) we deliver proportionate regulation which seeks to ensure that regulatory costs are proportionate to the expected wider regulatory benefits. We expect this to make the UK commodity derivatives markets more attractive to participate in supporting liquidity and innovation, thereby improving the UK's competitiveness as a financial hub.
- By introducing obligations that help increase our operational efficiency, for example, by requiring relevant trading venues to conduct and report to us market risk analysis, we strengthen our ability to effectively supervise our markets by identifying emerging risks which promote efficient and stable financial markets.

2.20 When considering the design of the framework we have had regard to the IOSCO Principles and the regulatory regimes in other jurisdictions. In light of the feedback received, in particular on strengthening trading venues' ability to identify risks through the enhanced reporting of OTC positions, we have changed our final rules. Most respondents to our consultation considered the proposed changes to reporting of OTC positions as imposing a disproportionate cost on firms, also considering the current international practices. Our final rules strengthen market integrity but avoid unnecessary burdens by establishing a regime more closely tailored to the risks in the market in question. This supports our secondary competitiveness and growth objective.

2.21 Treasury's recent commencement regulations (The Financial Services and Markets Act 2023 (Commencement No. 8) Regulations 2024) commence provisions in FSMA 2023 (Financial Services and Markets Act 2023) from 6 July 2026 with the intention that we will commence our final rules on that date. 6 July 2026 is therefore the date on which trading venues and other market participants will need to comply with the new rules and responsibility is transferred from us to trading venues to set position limits. This provides a substantial implementation period. Allowing a period of familiarisation with changes to the regime before relevant trading venues and firms are expected to operationalise them and will help ensure a smooth transition to the new framework.

Outcome we are seeking

2.22 The outcome we are seeking is to strengthen the commodity derivatives markets so that they can continue to serve their users, in the UK and globally, including during times of market stress.

2.23 A poorly designed commodity derivatives regulatory framework could expose relevant trading venues and market participants to risks that are not adequately managed, including disorderly pricing or settlement conditions and therefore costs. This may be exacerbated in times of market stress where risks can transmit more widely to the financial system.

2.24 Where disorderly trading conditions exist, this could negatively affect the price of commodities that are widely used by the public, including potentially on a global level. A resilient commodity derivatives regulatory regime therefore supports the real economy and promotes economic growth.

What we are changing – summary of feedback received and our response

2.25 Consistent with FSMA 2023, principal responsibility for setting position limits is being transferred from the FCA to trading venues, within a framework that we will supervise. FSMA 2023 gives us new rulemaking powers to establish how trading venues should set and apply position limits and what position management controls they should operate.

2.26 For each of the key areas of our consultation proposals, below we set out a summary of the feedback received and the approach we take in our final rules:

Key area CP23/27	Summary of feedback and our response
Scope of the position limits regime	**Feedback:** Market participants agreed with our proposals to limit the scope of the regime to 14 'critical' contracts and to contracts closely related contracts to those. Concern was raised about the definition of related contracts being too broad resulting in a large number of contracts being subject to position limits for certain critical contracts. **Our response:** The 14 contracts proposed will be the critical contracts that set the primary scope of the position limits regime. On related contracts our approach is less prescriptive than the one consulted on and allows trading venues greater discretion to calibrate the scope to ensure the position limit regime is not broader that what is required to maintain market integrity. Our rules specify the types of contracts which must be included in scope where, based on the feedback received, it is uncontentious that there is a direct pricing link. Those contracts include options on critical contracts, minis and spreads where one of the legs is a critical contract (and options, minis and spreads on related contracts). Further, relevant trading venues must consider whether there are other contracts that should be added to the list of related contracts because (a) they are capable of influencing the pricing or settlement of a critical contract; or (b) could be used to circumvent the position limit regime because they provide a comparable economic exposure to a critical or related contract.

Key area CP23/27	Summary of feedback and our response
Setting position limits	**Feedback:** Most respondents supported our proposal to give trading venues the flexibility to calibrate position limits according to the features of the market, the underlying commodity and the prevailing market conditions in line with the framework we proposed. Separately some respondents expressed concern that different position limits for 'spot months' and 'other months' together with accountability thresholds and additional reporting requirements create a regime that is more burdensome that those in other jurisdictions. **Our response:** The framework we proposed for setting position limits will be largely maintained with only some minor technical changes. We will implement our proposal to require position limits in both spot and other months but have made changes in relation to position management and additional position reporting as explained below.
Exemptions	**Feedback:** Most respondents supported our proposals, but concerns were raised regarding requiring trading venues to only grant the hedging exemption where they satisfy themselves that the exempt positions can reasonably be managed, including to be able to unwind them in an orderly way during times of market stress where market liquidity may be constrained (the 'risk management condition'). Amongst the concerns raised was the potential need to provide confidential and commercially sensitive information to the trading venue for it to assess the condition. Respondents welcomed our proposals to introduce two new exemptions from position limits – a liquidity provider and pass-through hedging exemption. Some respondents also suggested there should be an additional exemption where a person takes on positions from a firm in financial distress in line with practice in the US. **Our response:** On the risk management condition we are amending our approach to a less prescriptive assessment. Trading venues would be expected to deny an application for the hedging exemption where it assesses that such positions could not be liquidated in an orderly way, based on indicators it develops (such as the size of the position relative to open interest or deliverable supply). We will no longer ask non-financial entities to submit, or the relevant trading venue to assess, a more detailed stress test. This should ensure that the rules continue to achieve the intended objective of ensuring that exempt positions do not pose undue risk. We are implementing the proposals to introduce two new exemptions from position limits for (i) liquidity providers; (ii) for financial firms dealing with non-financial firms that are hedging risks arising from their commercial activities. Since we didn't consult in CP23/27, we are not introducing an exemption that allows trading venues to temporarily disapply position limits for non-defaulting market participants taking on positions of another market participant at this stage. We may consider doing so in due course through a separate consultation. Exemptions will be administered by relevant trading venues which shall have appropriate safeguards in place that prevent it from using relevant information it receives for purposes not connected with its regulatory functions.

Key area CP23/27	Summary of feedback and our response
Position management controls	**Feedback:** Respondents agreed with the inclusion of accountability thresholds as a position management control to support position limits. However, some respondents raised concerns over the requirement to establish accountability thresholds for both spot and other months. They said that accountability thresholds would be perceived as akin to position limits because of the connection between a breach of a limit and the costly provision of additional position information. In addition, as above, some respondents considered the regime – where accountability thresholds and position limits apply to both the spot month and other months – as more burdensome that those in other jurisdictions. **Our response:** We will implement, as proposed, the requirement to operate accountability thresholds in the spot month, where the risk of abusive practices is highest. For other months, we offer some operator discretion. The relevant trading venue would need to assess, for each critical contract, whether or not an accountability threshold was an appropriate additive measure, to manage risks for the market in question. Position limits will apply, as they do currently, to both spot and other months.
Position reporting	**Feedback:** Many respondents disagreed that trading venues should require additional reporting, including information on OTC positions, in the circumstances set out in our consultation, for example when a position holder exceeds an accountability threshold. Respondents highlighted the potential impact on the competitiveness of UK markets. There was also support for these proposals. **Our response:** The feedback received showed that while our rules went some way in calibrating the reporting requirement depending on the risks in the market, setting a single set of additional reporting requirements, including in respect of OTC positions, for all critical contracts is not the most effective way of meeting our objectives. We have amended our approach by requiring trading venues to have the power to obtain OTC position data, but we have not set in our rules in what specific circumstances. Trading venues will need to consider the risks that positions in OTC markets pose to their markets, with reference to their fair and orderly trading obligations. Trading venues will need to satisfy us that they are deploying their regulatory toolkit appropriately. Treasury has committed to legislate to give us fuller powers of direction in relation to the reporting of OTC positions by broadening the scope of existing powers. We would consider using our power of direction in Regulation 27 of the MiFI Regulations to require information where we deem it necessary, for example, where no trading venue rules for periodic reporting currently exist and we believe they need to be introduced taking into account specific factors or where a trading venue already operates OTC reporting rules, but there are non-compliance issues with the trading venue's rules. The approach and potential use of this power are explained further in Chapter 7. We are of the view that the change in our rules will strengthen market integrity while ensuring that the UK regulatory framework remains in line with best international practices in commodity derivatives markets. To note, current position reporting requirements in respect of all exchange-traded commodity derivatives will continue to apply to all trading venues, including UK multilateral trading facilities (MTFs) and organised trading facilities (OTFs).

Key area CP23/27	Summary of feedback and our response
Ancillary activities exemption	**Feedback:** While some respondents agreed with the proposed approach to publish guidance on the ancillary activities test, the majority expressed concerns regarding certainty of guidance compared to rules. Respondents were also concerned that there may be insufficient time for firms unable to rely on the ancillary activities exemption to obtain the necessary authorisation by 1 January 2025 given the removal of Article 72J of the Regulated Activities Order (RAO) and the transitional relief it provided. **Our response:** We will not implement our proposals relating to the ancillary activities' exemption and RTS 20 will remain in place while a permanent solution is considered. The use of the quantitative test for determining whether a firm can benefit from the exemption will continue to operate as it has done since we left the EU. Previous statements made about how the regime operates in the absence of data on the overall size of the market will remain operative until the revision of the regime is completed. The annual notification requirement on the use of the exemption by firms have stopped at the end of 2024 in line with changes the Treasury has made to legislation.
Timeline	**Feedback:** We proposed a 1-year transitional period after publication of this PS. Many market participants stated this timeframe is too short. Instead, they suggested a minimum of 18 months. **Our response:** We have provided a longer implementation period than the one we consulted on. Firms will have from February 2025 until July 2026 to implement the changes in line with Treasury's recent statutory instrument. The statutory instrument turns on, as from 29 October 2024, our ability to make the rules based on the matters we consulted on in CP23/27 and commences the substantive legislative changes to the framework around position limits from 6 July 2026 and the rules in this PS broadly commence on that date (see next steps below for more detail on timings).

Supervisory approach

2.27 We will take a robust and proactive approach in supervising firms' application of the rules. This will be particularly important during the initial implementation of the regime, to ensure consistent application and to mitigate the risk of harm to end-users and our markets. We will consider the extent to which reporting requirements allow relevant trading venues to operate their market surveillance arrangements as intended or whether further information is necessary.

2.28 Implementation of the new regime transfers first line responsibility for setting and enforcing position limits, and the granting of any exemptions, to trading venues. We expect trading venues, using our published criteria, to determine an appropriate framework and governance process for the setting of position limits, accountability thresholds, exemptions, ceilings, and the application of OTC reporting. We expect trading venues to establish a similar framework to define how contracts may move into and out of the position limit regime as related contracts.

2.29 Trading venues should then apply their frameworks to determine the full scope of contracts which will come into the new regime from the start date, and the initial limits which will be applied.

2.30 During H2 2025, we will assess both the overall framework, and the initial determination of position limits, thresholds, and related contracts, that are made by relevant trading venues and submitted to us by July 2025.

2.31 By the end of 2025 we will provide feedback for all such completed frameworks, and by the end of Q1 2026 for all determinations of scope and position limits, to allow trading venues to prepare for the introduction of the new regime in July 2026 in a timely manner.

2.32 Once the new regime is in effect, we will expect regular systematic reporting, the frequency of which is to be determined, from trading venues of exemptions granted and any breaches of position limits or instances where exemption ceilings are exceeded. We will monitor the frequency and impact of any such events.

2.33 We will receive annual reports from trading venues on the effectiveness and operation of accountability thresholds, a summary of exemptions, any exemption ceilings, positions that exceeded those ceilings, and relevant remedial actions taken. We will also receive an annual analysis of market risk, and a revised analysis when there is a significant change in market risk.

2.34 After a period of operation, we will consider whether implementation of the regulatory regime has affected liquidity in relevant markets and, to the extent possible, the operation of relevant markets in times of market stress.

2.35 Finally, we will consider whether the reform has reduced unnecessary costs and administrative burdens for firms.

Equality and diversity considerations

2.36 Section 149 of the Equality Act 2010 (EA 2010) requires the FCA to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between different people when carrying out their activities. We are also required to give thought to the potential impact of new proposals on relevant groups. We have considered the equality and diversity issues that may arise from the PS. Overall, as our intention is to maintain the regulatory requirements which currently apply to firms once the relevant parts of assimilated law are repealed, we do not consider that the proposals materially impact any of the groups with protected characteristics under the EA 2010.

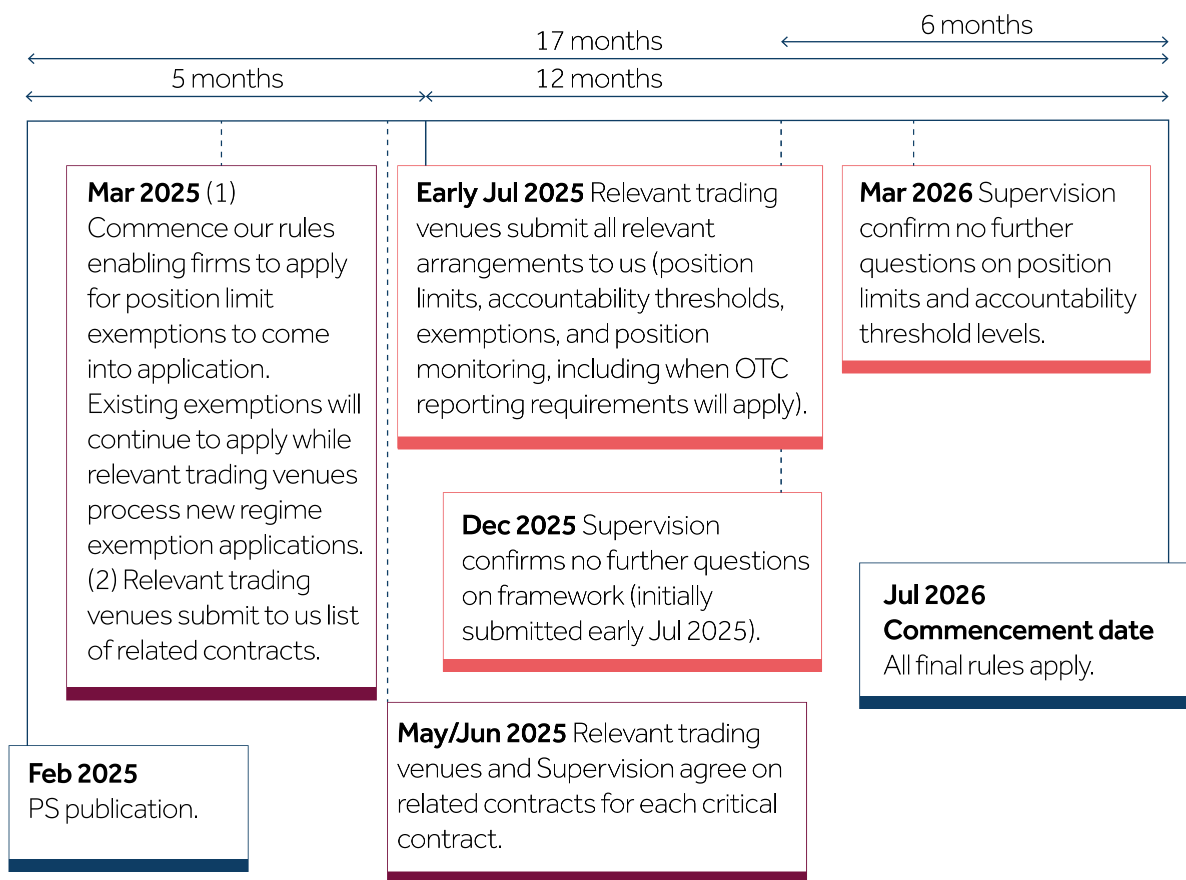
2.37 Overall, we do not consider that the changes materially impact any of the groups with protected characteristics under the EA 2010.

Next steps

2.38 All the rules in the instrument made as part of this PS will come into force on 6 July 2026. We will commence rules that enable trading venues to receive and process applications for exemptions from position limits from 3 March 2025. Exemptions granted under the current regime will continue to apply until 5 July 2026. Transitional provisions relating to trading venues will also commence on 3 March 2025 to allow notification to us, prior to implementation, of various arrangements, such as the methodology for and setting of position limits and accountability thresholds and policies and procedures.

2.39 In H1 2025 we will receive from trading venues their proposed frameworks for position limits, accountability thresholds, exemptions, position management and monitoring, which will be subject to our review and non-objection.

2.40 The content and format of the annual reports received from trading venues will be published in 2026 for use in the first reports, which will be due in Q3 2027 to cover the period 06 July 2026 to 30 June 2027.



What you need to do next

2.41 Trading venues and market participants should familiarise themselves with our rules and guidance to ensure they are able to comply with the relevant requirements.

What we will do next

2.42 We expect close engagement with relevant trading venues and market participants during the implementation period before our new rules take effect. We will also prepare our supervisory capabilities, including systems ahead of the commencement of the new regime. Following the commencement of the new regime we will speak to relevant trading venues and market participants to ensure an orderly implementation of the changes.

Chapter 3

Our response to feedback on the scope of the position limits of regime

Critical contracts

Our proposal

3.1 As outlined in CP23/27, the MiFID II position limits regime has proven to be too broad in scope as it requires the establishment of position limits for all commodity derivatives. The breadth of the scope of the regime was often cited as a source of compliance cost and complexity. Market participants stressed that its broad scope hindered the ability of liquidity providers to serve markets efficiently. This has caused market inefficiencies with little evidence of the risk mitigation that the regime sought to provide.

3.2 In December 2020 we published a supervisory statement clarifying that the position limit regime only applies to commodity derivatives contracts that are physically deliverable or are agricultural derivative contracts.

3.3 In CP23/27, we proposed that the scope of the position limit regime be driven by the risks that contracts pose to our markets and to end users. Limits should cover contracts for which:

- the risk from abusive practices or disorderly trading carries the greatest potential negative impact to relevant markets; and
- position limits and the accompanying position management controls are effective arrangements to mitigate those risks.

3.4 In CP23/27, we set out the criteria that we will have regard to when determining which contracts are critical, which are:

a. The settlement method at expiry.
b. The size of the derivative market compared to the size of the underlying physical market, and the robustness of the reference price used to settle contracts.
c. The type of underlying market, and the impact on end-users of disorderly trading.
d. The absolute size of the derivative market.

3.5 We said that not all of the criteria need to be met for a commodity derivative contract to be deemed critical, but the criteria will be considered comprehensively. Based on an assessment against the criteria above, we identified 14 critical contracts for which disorderly trading would have the greatest impact on commodity markets and their users. The list of critical contracts which we proposed to be subject to position limits is as follows:

Contract name
LME Aluminium
LME Copper
LME Lead
LME Nickel
LME Tin
LME Zinc
IFEU London Cocoa Futures
IFEU Robusta Coffee Futures
IFEU White Sugar Futures
IFEU UK Feed Wheat Futures
IFEU Low Sulphur Gasoil Futures
IFEU UK Natural Gas Futures
IFEU Brent Crude Futures
IFEU T-West Texas Intermediate (WTI) Light Sweet Crude Futures

3.6 All the critical contracts above, except WTI Light Sweet Crude Futures, are currently subject to position limits as set out in our supervisory statement. We explain further below the reasons for including the cash settled WTI Light Sweet Crude Futures contract.

3.7 In CP23/27 we also determined that certain contracts, which are currently subject to position limits under our supervisory statement, would not be deemed critical contracts. This was based on their small size and relative illiquidity. Those contracts are:

Contract name
LME Aluminium Alloy
LME Cobalt
LME NASAAC
IFEU HOS Permian WTI Storage Future
IFEU O62 Heating Oil Outright – NYH ULSD Future
IFEU O67-Heating Oil Outright – NYH ULSHO Future
IFEU TFN-ICE Futures Europe Dutch TTF Natural Gas Futures
IFEU UBL-UK Power Baseload Future (Gregorian)
IFEU UPL-UK Power Peakload Future (Gregorian)

3.8 We also considered contracts that are not in scope of our supervisory statement but that are significant given their use and global reach.

3.9 We identified the WTI Light Sweet Crude Futures as critical in light of its large size and because it is a key benchmark to price the underlying and related markets. Therefore, disorderly trading would have a high impact on all users, including end users of the underlying commodity. The contract is also a significant anchor contract with its related physically delivered HOS Permian WTI Storage Future, which could be deemed a related contract within the WTI ecosystem.

3.10 The other cash-settled contracts we considered were Dubai 1st Line Future, Singapore Gasoil (Platts) Future and Dated Brent Future. However, we assessed these contracts against the criteria outlined above and concluded that they should not be deemed critical contracts.

3.11 We asked for views about whether any of these contracts or the Permian WTI Storage contract should be added to the critical contract list. In CP23/27 we asked:

Question 2: ***Do you agree with the approach outlined, including the criteria to assess the criticality of contracts? If not, please explain why.***

Question 7: ***Do you agree with the list of critical contracts above? If not, please explain why.***

Question 8: ***Should any of the three cash settled contracts mentioned above (Dated Brent Future, Dubai 1st Line Future, Singapore Gasoil (Platts) Future), or the physically settled Permian WTI Storage contract be added to the list of critical contracts? If yes, please explain why.***

Summary of feedback

3.12 Most respondents agreed with the proposed approach based on the application of position limits to a narrower set of critical commodity derivatives contracts. They also agreed with the criteria proposed for determining which commodity derivative contracts are critical. However, a few respondents had specific comments on the criteria or on their applications as follows:

- The criteria should not be considered equal as they do not equally contribute to the potential risks posed by the relevant contract. Instead, they should be prioritised, and contracts should be considered as critical only where the most important criteria are satisfied. The respondent considers that the size of the commodity derivative market and the potential consequences of volatility in that market should be the primary considerations.

- For certain contracts, using the lot size to assess the size of the market may not be appropriate. This is because lots are not a uniform metric and can vary depending on the underlying asset leading to an incorrect result about whether a contract should be in scope. The respondent suggested using the monetary value of the open interest or traded volumes where appropriate.
- CP23/27 and proposed MAR 10.2.1B G list the appropriate criteria, but the former appears to suggest that the FCA must take them into account, whereas the draft guidance requires us "to have regard to" those factors. The inclusion of the criteria in guidance rather than rules would suggest some, or even all, of the criteria need not be considered when we assess the criticality of a contract.

3.13 Many respondents disagreed with the inclusion of T-West Texas Intermediate (WTI) Light Sweet Crude Futures on the basis that it is a contract that is subject to Commission Futures Trading Commission (CFTC) regulation and therefore a US position limit already applies. It was argued that applying position limits and accountability thresholds would result in multiple limits and thresholds being applied to the same contract under different regimes which would result in complexity and duplication. A suggestion was made for consideration to be given to the authority overseeing the primary market where volume is greater, while another respondent suggested that trading venues be given the ability to apply the same position limit as is applied elsewhere. Respondents also noted that the contract does not meet all the criteria given it is not physically settled.

3.14 One respondent raised concern about the inclusion of Robusta Coffee Futures. While it is recognised that it is a physically settled contract, in practice it is not delivered but settled in cash. Their concern was centred around the application of position limits and ensuring there continues to be sufficient market liquidity for contracts to remain of value to the industry and, importantly, there is sufficient activity to make them financially viable for a trading venue to continue to operate them.

3.15 One respondent questioned the inclusion of UK Natural Gas Futures as a critical contract. Their argument was that this contract is a minor contract, accounting for 9% of European gas trading. Therefore, the respondent considers the size of this market small. The same respondent also said that it would be reasonable to add LNG contracts to the list of critical contracts on grounds they are more relevant to UK security of supply than the contracts suggested as critical in the consultation. They also noted that LNG contracts are arranged and executed by a range of firms who operate trading venues both within and outside the UK, therefore making it unclear if the scope of critical contracts are limited only to those admitted on a Recognised Investment Exchange (RIE) or to all types of trading venue.

Our response

Given the feedback outlined above, we will implement our approach of requiring relevant trading venues to set limits only for critical contracts. We also intend to implement the proposed criteria for determining critical contracts.

In respect of the feedback that not all criteria should be considered of equal importance, we would highlight that in CP23/27 we said that '*Not all limbs of the […] criteria need to be met for a commodity derivative contract to be considered critical, but the assessment of each criterion for the relevant contract will be considered holistically*'. While certain criteria may take priority over others, we do not believe that setting a single set of rigid requirements to assess the criticality of contracts is the most effective way of determining the scope as outlined above. The criteria must be sufficiently broad to allow us to calibrate the scope of the regime as we deem appropriate considering differences in market structure and risks to our markets, which are different for different underlying commodities and for which the relative importance may change over time.

The criteria against which we will assess whether contracts are critical are in guidance because they inform market participants on how we intend to determine critical contracts rather than set obligations for firms. In this instance the guidance is a statement of policy about how we will approach the determination of critical contracts, which should make the regime more transparent. We intend to consider all of the criteria in assessing whether a contract should be included on the list of critical contracts, and we are intending to provide market participants with the opportunity to provide feedback on the assessment of a contract's criticality before it is decided whether it will be added to the critical contract list.

In assessing whether a contract is critical, we have not specified the precise metric to be used when considering the size of the market. On the suggestion to use monetary value rather than lots for certain contracts, our analysis in CP23/27 used lots as the market standard for trading commodity derivatives. The analysis using monetary values would have yielded the same outcome. But we intend to look at both metrics.

There were no objections to excluding the following cash settled contracts from the critical contracts list: Dated Brent, Dubai 1st Line and Singapore Gasoil (Platts). As proposed in CP23/27 we will not include these contracts in the list of critical contracts.

Although many respondents raised concerns about the inclusion of T-WTI Light Sweet Crude Futures, we remain of the view that it is a critical contract given its relevance in commodity markets. We acknowledge that the market for the underlying physical commodity of the T-WTI Light Sweet Crude Future is liquid and therefore the risk of undue price influencing is relatively low given the market size. The fact that the contract is cash settled should also reduce the risk associated with large positions that are brought to delivery. However, this contract is interconnected with the US WTI contract, which is a significant anchor in the energy markets, and disorderly trading in it would have a high impact on all users, including end users.

In response to the points raised about the cost and complexity that arises from contracts to which position limits apply in the UK and in other jurisdictions, we would expect relevant trading venues to have regard to limits applied under different regimes. Since some of the factors driving the level of position limits are likely to be the same (e.g. deliverable supply), it is possible that the position limit is set at the same level to derivatives listed in the UK and overseas. As mentioned in CP23/27, we will supervise the way trading venues set their limits having particular regard to their methodology, the input used, whether they adequately considered times of market stress when taking into consideration the parameters set to establish the limits and separately consider position limits set in other jurisdictions for similar or equivalent contracts.

We note the concerns raised about the inclusion of Robusta Coffee Futures and the potential impact on liquidity. However, this remains a critical agricultural contract for the UK in our view and is comparable to coffee contracts subject to limits in the US and the EU. The contract is a key benchmark for the pricing of physical Robusta coffee by producers, exporters, and end users. It is actively traded by producers, exporters, trade houses, importers and roasters as well as by managed funds and both institutional and short-term investors. We acknowledge the importance of position limits not undermining the liquidity in the markets. However, the contract is, especially compared to other agricultural derivatives, sufficiently liquid to be subject to position limits. Besides, our rules allow trading venue's position limit setting methodology to consider various factors, including liquidity in relevant markets as well as susceptibility to being cornered, to ensure each limit is set in a reasonable way.

We maintain that UK Natural Gas Futures should be subject to a position limit as it is a physically deliverable contract and therefore, everything else being equal, more susceptible to the risk of disorderly pricing or settlement conditions than cash settled contracts. Regardless of its relative size to other natural gas contracts it has sufficient liquidity and open interest to support a position limit.

In response to the comment about possible uncertainty about whether critical contracts are limited to those traded on UK RIEs, while our rules refer to trading venues, which could potentially include an MTF or an OTF, we clarify that the current list of critical contracts relate only to contracts listed on two RIEs, the London Metal Exchange (LME) and ICE Futures Europe (IFEU). We have specified consistently across all the critical contracts the name of the relevant RIE where the contract is listed.

Related Contracts

Proposal

3.16 CP23/27 said that the position limit regime should consider the complex ecosystem of derivative contracts which provide different ways for commercial users to hedge their risk and for financial firms to offset or take risk. Contracts that are closely related to critical contracts, but outside the scope of position limits, would challenge the effectiveness of a regime if those contracts could pose similar risks to those posed by the ones that are in scope.

3.17 Firms might try to influence the pricing and settlement of the critical contract through positions taken in other related contracts. Or, positions in related contracts may have a similar effect on the underlying commodity as positions in the critical contract.

3.18 Unlike for critical contracts, we didn't propose a list of related contracts, but rather set out rules defining the types or characteristics of contracts that trading venues have regard to to identify related derivatives. We also said that trading venues shall publish a list of related contracts for each critical contract traded on their markets.

3.19 In CP23/27 we described related contracts as any commodity derivative traded on a UK trading venue:

- the settlement price of which is directly linked to the settlement price of a critical contract – aimed at including, amongst others, cash settled look-alike contracts;
- that can result in a position or delivery obligation in the critical contract or another of its related contracts, either via exercise, settlement or expiration – aimed at including options and spread contracts that contain the critical contract or a related contract as the underlying of the option or as one of the legs of a spread contract; and
- the settlement price of which is indirectly linked to the settlement price of the critical contract – aimed at including contracts that have distinct but related features, such as the same underlying commodity, delivery location(s) or settlement types, but not necessarily all three.

3.20 In identifying related contracts, our rules set the expectation that trading venues should consider the objectives of the regime. The risks of arbitrage and of undermining the protections provided by the regulatory regime should be the drivers of whether a contract is related to a critical one. This was intended to provide relevant trading venues with some discretion not to deem certain contracts as related where appropriate.

3.21 We also explained how position limits should apply to a participant's net positions in the critical contract and all related contracts. We said that trading venues should not permit netting – where such netting exacerbates the risk arising from large positions to the orderly pricing and settlement of transactions. In this context we referred to positions resulting from trade-at-settlement (TAS) transactions. We also confirmed that we are not changing our rules on how in-scope contracts shall be aggregated and netted with respect to parent undertakings.

3.22 In CP23/27 we asked:

Question 3: *Do you agree with the approach outlined above with respect to related contracts? If not, please explain why.*

Question 4: *Are there any specific types or classes of contracts that should not be included in the related contract concept? If so, please explain why.*

Summary of feedback

3.23 Respondents agreed with the principle that trading venues should be responsible for the identification of related contracts. They also asked us to clarify that trading venues should only identify contracts as related where they are traded on the same trading venue as the relevant critical contract. This is because under our proposed rules it is conceivable that related contracts traded on other trading venues, including MTFs or OTFs, would have to be included in a participant's aggregate position when monitoring against the relevant position limit.

3.24 Some respondents suggested requiring trading venues to notify market participants of the addition of any related contracts before they are included in the regime and, if practicable, allow for feedback to be given on the appropriateness of such categorisation and inclusion.

3.25 Several respondents requested an exemption for new and illiquid contracts from being deemed a related contract by retaining the current approach set out in technical standards, providing trading venue discretion to identify such contracts or introducing a transitional/implementation period before being in scope.

3.26 Many respondents thought the framework for related contracts was too prescriptive and were concerned that the proposed definition for related contracts is too broad and results in a very large number of contracts being subject to position limits, the inclusion of which would not necessarily strengthen the position limits regime. For example, in the case of the critical contract Brent Crude Futures, it was asserted that more than 115 related contracts could be brought into scope.

3.27 While we received feedback that some respondents agree with the need for a definition to ensure consistent application of the scope across trading venues, several respondents suggested that consistency can be ensured by setting out the outcomes we intend to achieve and through close supervision by us. In line with this suggestion, a couple of respondents said that they would prefer principles with sufficiently broad parameters to afford flexibility and proportionality for trading venues to appropriately manage the evolving risk landscape. While one respondent recognised that there is some discretion provided to relevant trading venues, they are concerned that, as drafted, the rules would not provide sufficient flexibility to design and operate arrangements which are tailored and proportionate.

3.28 Some respondents consider related contracts should only include those that can influence the pricing and settlement of the critical contracts. In turn, some of these respondents suggest excluding contracts based on indices published by Price Reporting Agencies, such as Platts, which include one or more critical contracts, inter-contract spreads that include a critical contract and balmos contracts. They consider these unlikely to be capable of being used to manipulate a critical contract as their price is derived by them.

3.29 With regard to not permitting netting where such netting exacerbates the risk arising from large positions to the orderly pricing and settlement of transactions, on industry calls following the consultation period, some market participants voiced a preference for no flexibility in relation to aggregation and netting. They said it would add an additional layer of operational complexity and there may be inconsistencies in the way relevant trading venues apply rules.

Our response

On the request to clarify that trading venues may only identify contracts as related when they are traded on the same trading venue as the relevant critical contract, we agree that it would not be practicable for a trading venue to in certain cases identify related contracts traded on other trading venues. More importantly, it would not be feasible for a trading venue to be able to enforce the relevant position limit, which applies at all times, without access to timely information about the positions held in related contracts traded on other trading venues. So, we confirm that position limits will apply only to related contracts listed on the same trading venue of the critical contract.

Even where a trading venue was able to identify contracts traded on other UK trading venues, it would be particularly difficult to access timely information on the size of its participants' positions in those contracts to be able to enforce the relevant position limit. We also note that related contracts traded on the same trading venue as the critical contract will likely account for the large majority of the open interest under the position limit regime.

However, we would expect a trading venue's position management powers to enable it to ask relevant participants about any of its positions (whether in a related contract or not) when appropriate as described further in Chapter 7. Appropriate information safeguards should be in place that prevent the trading venue from using information it receives in this capacity for purposes not connected with its regulatory functions (see MAR 10.3.7 G (2) of our final rules).

We have, therefore, clarified in our final rules (see definition of *related contracts* under glossary of definitions) that related contracts only consist of derivatives traded on the same trading venue as the critical contract.

On giving market participants notice and the chance for feedback ahead of adding related contracts to the scope of the position limits regime, trading venues must identify and maintain a list of related contracts in line with MAR 10.3.3C R (6). As for other aspects of their rulebooks, we would expect trading venues to properly engage with their members before adding a contract and to notify them sufficiently in advance before a contract is added to the list of related contracts. We would expect the trading venue to determine a reasonable period of notice to ensure an orderly market. However, market participants, should expect certain contracts, such as options on a critical contract, to always be in scope.

On the need for an exemption or relief for new or illiquid related contracts, we do not consider this necessary. We deem it unlikely that positions in a related contract, even where it is relatively illiquid, can be unduly constrained by position limits that apply to the aggregate net position across the critical and all the related contracts. Further, as mentioned, we expect trading venues to provide market participants with a reasonable period of notice before adding a contract to its list of related contracts to maintain orderly markets.

On the potential broad application of the scope of related contracts, we aimed to provide relevant trading venues with some discretion not to identify certain contracts, particularly those with an indirect pricing link, where they assessed that for the contract concerned it would not risk undermining the protections provided by the regime and would not leave the risk of arbitrage exposed. This was done through proposed MAR 10.3.3A R (6) and (7). Together with the proposed definition, the feedback we have received is that the proposed rules would not provide sufficient discretion to trading venues not to identify relevant contracts as related where necessary and results in a broad application of the scope for some contracts, such as in respect of the critical Brent Crude Future.

We agree with the feedback that contracts capable of being used to influence the pricing and settlement conditions of the critical contract should be included in the scope of related contacts.

However, the concept of related contracts was also introduced to mitigate the risk of circumventing the position limit regime. We acknowledge that broadly speaking averaging contracts, which take their price from a critical contract such as Dated Brent and Brent 1st Line, are less likely to be capable of influencing the pricing and settlement conditions of the critical contract. However, we do not think it would be a good policy outcome to create incentives for participants to move liquidity away from critical contracts which are used as key benchmarks for pricing the underlying commodity market.

We have therefore amended our approach to define related contracts more precisely and, to an extent, more narrowly. We also think that trading venues, when identifying related contracts, should consider which other contracts should be in scope to prevent arbitrage or avoidance

of position limits, such as those that represent a comparable economic exposure to a critical contract. Our new approach is outlined in the glossary of definitions and MAR 10.2.1A – 10.2.1D.

Our new rules specify the types of contracts which must be included in scope where it is uncontentious that there is a direct pricing link. Those contracts include:

- minis of a critical contract
- options on a critical contract
- spreads where one of the disaggregated legs is on a critical contract
- any options, minis, spread (where one of the disaggregated legs is on a related contract) on related contracts.

In addition to this set of contracts, trading venues must consider whether there are other contracts that should be added to the list of related contracts because they (a) can influence the pricing or settlement of a critical contract; or (b) could be used to circumvent the position limit regime because they provide a comparable economic exposure with the critical contract. For example, in respect of (b), the day before the expiry date of the critical contract, a participant may trade a physically delivered daily future of the critical contract – this would allow it to take delivery in the same way they would do in the critical contract – and take a position higher than the relevant position limit. This approach caters for evolving markets where existing contract types may be modified or new contract types introduced, allowing relevant trading venues to define its set of related contracts to preserve the objectives of the regime and/or to avoid arbitrage.

We intend to maintain an approach that allows relevant trading venues to make a risk-based decision about whether to include specific contracts under the position limit of a critical contract. Further, as with all commodity derivatives traded on the trading venue, we would expect appropriate position management tools to be in place to mitigate risks of market abuse and/or disorderly trading where a decision has been made not to subject a contract to a position limit.

While we understand some market participants prefer not to provide trading venues with flexibility in relation to aggregation and netting, we consider in certain exceptional circumstances it may be appropriate – any decisions not to net certain contracts would be reviewed by us. In CP23/27 we said we would have particular regard to positions resulting from TAS transactions when reviewing trading venues' approach to netting. Following the consultation period, some respondents asked us to explain the emphasis on TAS.

On 20 April 2020, the day before it was due to mature, the price of the NYMEX WTI crude oil futures contract went negative. The Negative Pricing of the May 2020 by A Fernandez-Perez, A-M Fuertes and J Miffre explains how TAS was an aggravating factor and likely played a role in price distortion and market abuse. The report suggests that it might be of interest for regulators to limit the netting of speculative TAS positions with speculative outright positions during the contract delivery month.

We considered whether positions in TAS should be included when calculating the size of a participant's position against the relevant limit and determined that inclusion could potentially understate a participant's true exposure and hence market power. We therefore consider that trading venues should ensure they have adequate position management in place to monitor TAS positions, which are traded intraday. We are reiterating from CP23/27 that for TAS transactions trading venues shall determine how the position limits regime applies to them and whether the ability to net a TAS position with the underlying critical contract affects the orderly pricing and settlement of the critical contract.

Adding new contracts to the critical contract list

Our proposal

3.30 In CP23/27 we said in order to identify changes in the criticality of contracts, we will use internal data and market intelligence gathered through our supervisory engagements with trading venues and market participants. We will also rely on trading venues to notify us when they believe a contract should be monitored more closely (before the need to assess its criticality) based on factors, including the size of the market, changes in volatility, liquidity, underlying characteristics of relevant markets (e.g. seasonality), and external factors that affect the fundamentals of the underlying commodity.

3.31 In terms of the process, we proposed that once we have determined that a new contract is critical, we would provide market participants with a 45-day notice period to provide us with comments. Following that we would evaluate comments and finalise our decision. Where appropriate, new contracts would be added to the list of critical contracts as of a specified effective date. Trading venues would then have to establish position limits within 30 days of a published decision to add a contract to the list or within a day of adding the critical contract to our register, whichever is later. Market participants would be expected to comply with the position limit set from the relevant effective date.

3.32 In CP23/27 we asked:

Question 5: ***Do you agree with the proposed approach to update the list of critical contracts? If not, please explain why.***

Question 6: ***In notifying us of a particular market that requires closer monitoring, are there any other factors that trading venues should consider? If you think there are, please explain what the additional factors are and why they should be considered.***

Question 9: ***Taking account of our proposals on position management and the reporting of additional information, do you consider that the risks arising from positions held OTC are adequately dealt with despite the fact that position limits do not apply to OTC contracts? If not, please explain why.***

Summary of feedback

3.33 Some respondents felt that it was unclear whether there is a process or opportunity to challenge or provide input on the assessment of the proposed new critical contract against the criteria. Respondents understood that there is a need for timely updates to the critical contract list when markets are rapidly changing, however, they emphasised the need for a proper consultation process whereby an assessment against each of the criteria is provided and usual process requirements apply, including cost-benefit analysis. It was suggested that it be made clearer that the initial notice is a proposal and not a determination, and that the comment period is a proper consultation period. One respondent proposed that there should be a periodic assessment of the critical contracts. One respondent was also unclear about whether 30-day period includes time for participants to put in place relevant technical and operational changes to comply.

3.34 While a couple of respondents agreed with the proposed process and timeline to add new critical contracts to the list, most respondents considered the 30-day implementation timeline too short. Several respondents said that they want to see an extension from 30 days to 90 days, two respondents considered 90 days too short, and one respondent proposed a flexible approach between 30 and 90 days depending on the risk of a mass sell-off to reduce positions.

3.35 Of those respondents that provided feedback on whether our proposals on position management and the reporting of additional information adequately deal with the risks arising from positions held OTC even though position limits do not apply to OTC contracts, the majority agreed that they do. One respondent also raised concerns around potential disparity within the market (those participants subject to position limits potentially being disadvantaged compared to those not subject to position limits) and the practicability of legal enforceability of position limits on OTC contracts.

Our response

The process for adding or amending contracts to the list of critical contracts aims to ensure that the list remains relevant and up to date. This is particularly important in fast changing market conditions. We intend to rely on the data sources proposed above and notifications by trading venues to understand where a contract might need to be more closely monitored and/or assessed against the criticality criteria.

In determining the approach and length of the process for adding a new contract, we tried to balance the need to factor feedback with the need for us to be able to amend the list in an expedient and cost-effective way. Our intention was always to ensure we gather feedback on our assessment before determining a contract as critical.

We maintain an approach where we will publish an initial notice with our intention to add a new contract to the critical list. We are maintaining a 45-day consultation period to invite feedback.

After the consultation period, we will then consider responses before finalising our decision. Our final decision will be published in a second notice confirming, or not, the inclusion of a new contract as critical. In the notice, where we conclude that the contract is critical, we would establish the effective date for when it will be added the list. This will coincide with when trading venues shall establish the applicable level of the position limit and market participants comply with them.

In light of the feedback, we are not setting by when position limits in the new critical contract must be in place. We will determine the effective date on the basis of discussions with the relevant trading venue and market participants – this will ensure sufficient time is provided for positions to be managed in an orderly manner before the limit applies.

FSMA 2023 removes economically equivalent OTC (EEOTC) contracts from the scope of position limits through deletion of references to EEOTC. We note that respondents raised some concern about the disparity that could exist between on-exchange positions which are subject to limits, and OTC positions which are not. In our view, in line with the majority of feedback, we expect the position management tools available to trading venues to manage risks to their markets to represent an adequate suite of powers. Further, we note that Regulation 28 of the MiFI Regulations allows us to require persons to limit or reduce the size of a position they hold, including an OTC position, should we consider it necessary. We view this power as a backstop to the regime of position limits and position management, likely to be used only in circumstances where other tools are insufficient for us to deliver on our market integrity objective. Chapter 6 provides further details including on the actions a trading venue may take in relation to positions entered into outside of the relevant trading venue.

Chapter 4

Our response to feedback on setting position limits

4.1 The proposals in CP23/27 covered our approach to the application of position limits to both spot months and the other months periods, the trading venues and participants in scope of the regime, the rules around the framework, including frequency of reviews and governance arrangements, and the criteria that should be considered when developing the methodology for determining position limits. We provide a summary of the feedback and our response for each section below.

Our proposal

4.2 FSMA 2023 transfers primary responsibility for setting position limits from us to trading venues. However, trading venues will need to satisfy us that the limits they propose meet the criteria and standards set in our rules.

4.3 We may exceptionally, by giving directions, establish position limits in respect of commodity derivatives to which position limit requirements imposed by trading venues apply when we consider it necessary to do so. We may also exceptionally under Regulation 28 of the MiFI Regulations intervene in markets by directing a person to limit their ability to enter into a contract, restrict the position size the person may hold or require a reduction of the position held.

4.4 The approach we proposed in our consultation allows trading venues to calibrate position limits according to the features of the market, the underlying commodity and the prevailing market conditions. We did not propose to establish fixed baseline thresholds but instead we said that we would supervise the way trading venues set their limits having regard to their methodology, the input used, whether they considered historical volatility in times of markets stress and, separately, consider position limits set in other jurisdictions for similar or equivalent products.

4.5 The number and types of criteria – that trading venues should have regard to when developing their position limit setting methodology – reflect the wide range of commodities and markets they apply to. Many of the criteria in UK version of Commission Delegated Regulation (EU) No 2017/591 (referred to in the Handbook as MiFID RTS 21) remain relevant but we proposed some changes. Based on specific market events we considered it necessary for the criteria to clearly include an assessment of the liquidity of the market and ability of market participants to unwind their positions, including during times of market stress. Additionally, we considered it necessary to assess the ability to make or take delivery, including during times of stress, together with the existing factor looking at the characteristics of the underlying market.

4.6 In CP23/27 we asked:

Question 10: Do you agree with the approach and framework outlined above for setting position limits? If not, please explain why.

4.7 Some of the responses to this question are also relevant for the other sections below; we have separated the feedback accordingly.

Summary of feedback

4.8 All respondents agreed in principle with the proposed approach that enables trading venues to calibrate position limits appropriately for each relevant market.

4.9 The areas which respondents sought clarity include:

- Confirmation about whether the FCA retains the power to impose position limits when there are none or when the limit is not adequate.
- Clarification about how persons are expected to calculate their net position in relation to position limits set by the FCA, where relevant.
- Clarity on the definition of "group" in proposed MAR 10.2.2D (3). They asked if it is a reference to group as defined in the FCA Glossary, where positions held on behalf of a person by its affiliates are included, or to the aggregate position held by all group members (in line with the current approach and the approach proposed for trading venues). One respondent suggested the meaning should be on the notion of 'control of the positions' (ie control of trading decisions) and not of 'control of the entity/subsidiary' (ie ownership). Respondents also sought clarity as to whether contracts can be netted against one another, for example, if the FCA applies a position limit to a contract which already has a trading venue position limit, should a person calculate their net position by reference to that contract and any related contracts identified by the trading venue.
- Suggestion for a further FCA review of any position limits that apply to similar contracts to ensure the levels are harmonised to the extent possible and appropriate. While not currently an issue – because there is no overlap in the list of critical contracts between trading venues – it is possible for similar contracts to be traded on different trading venues. Dealing with different position limits would create additional administrative and operational burdens for firms accessing those trading venues. They also said this could make the UK less competitive internationally, as incoming firms would need to comply with multiple position limit regimes rather than a single regime (as is the case in other jurisdictions).

Our response

Given the strong support from the consultation, we are going ahead with our approach as consulted.

We have provided the clarifications that some respondents sought as follows:

- Our powers with regards to imposing position limits are clarified in paragraph 4.3 above.
- In the event that we deem it necessary to impose a position limit, aggregation and netting (in relation to questions regarding the treatment of an entity and its group) will apply in the same way as it does currently and where trading venues set limits. Further, our direction would specify the extent to which related contracts should be included in the calculation of a position holders' position.
- On the suggestion that we should provide a further review to ensure levels are harmonised, to the extent possible, and appropriate in case similar contracts were deemed critical but different trading venues were required to set the limits, we consider this already covered as part of our supervisory approach. As mentioned in CP23/27, trading venues should notify us for agreement in advance of implementing its methodology, setting position limits, or making significant changes to either. In addition, as mentioned above, we would supervise the way trading venues set their limits having regard to a number of factors, including position limits set in for similar or equivalent products (while we say in other jurisdictions above, this could equally apply in the UK if it became relevant).

Spot and other months

Our proposal

4.10 In CP23/27 we proposed a similar approach to the current regime, which involves applying position limits to both spot months and other months (including to prompt dates for LME contracts), with an expectation of a tighter limit for the spot month. We said trading venues should also consider whether multiple position limits should be set within the spot month period and/or the other months period respectively, where not doing so may risk undermining the protections provided by the regulatory regime and leave the risk of arbitrage exposed.

4.11 While accountability thresholds are discussed in more detail in Chapter 6, the feedback below considers our approach in relation to both position limits and accountability thresholds together. We proposed applying accountability thresholds to both spot months and others also.

Summary of feedback

4.12 Feedback to the proposals was mixed. While some respondents supported the proposals as consulted, many others argued that the proposals should be modified. The principal argument was that the application of two levels (a position limit and an accountability threshold) to both the spot and other month contracts would create a more burdensome regime than in other jurisdictions and place undue burdens on participants resulting in a potentially negative impact on the UK's competitiveness.

4.13 Suggestions included:

- The FCA should follow a similar approach to the CFTC, applying a position limit to the spot month and accountability thresholds for all other months.
- Trading venues should only be allowed to establish position limits for the spot month period, at least for the time very close to expiry.
- The FCA should require trading venues to set position limits for the spot month with discretion to also set accountability thresholds for the spot month.

4.14 A small number of respondents would like to see more flexibility, allowing relevant trading venues discretion on whether position limits should apply over the whole length of the spot month period. Related to this, one respondent said the proposal to have separate limits for spot month and other month contracts supports the underlying objectives of the new regime, however for markets that are unique in the number of settlement options provided and the way liquidity is spread across the curve, the trading venue should be able to determine the period/dates that should be considered as spot month and those that should be considered as other month.

Our response

We believe that the benefits of applying a position limit and an accountability threshold to the spot month, where the market impacts of disorderly trading are greatest, outweigh the concerns raised.

We continue to see cases where the early warning provided by an accountability threshold provides real value in assessing risk to orderly settlement. We intend to maintain our original proposal on the application of both position limits and accountability thresholds to spot months.

We consider that some of the concerns stem from our proposals in CP23/27 to require additional reporting under certain circumstances, including when an accountability threshold is exceeded. We explain this in more detail in Chapter 6 and 7, but some responses highlighted that the requirement to provide additional reporting when an accountability threshold is exceeded would result in those thresholds acting as a second hard limit, which market participants would avoid going above. We consider some of the concerns raised will be mitigated by our amended position on additional reporting (as exceeding an accountability threshold would no longer automatically trigger additional reporting obligations).

We consider that applying position limits outside the spot month, continues to offer an important control for large positions given other month contracts can represent a key benchmark and disorderly trading can have a large impact on the users of those markets. The major example of harm experienced in UK markets stemmed from large positions in other months (the nickel 3-month contract). We do, however, recognise, in line with the MiFID approach, that these position limits may typically be calibrated to allow greater latitude given the additional time available to manage positions leading to expiry.

We believe that the dual protection of a threshold and a limit in certain markets remain important, but (as explained further in Chapter 6) we are adjusting our proposals regarding accountability thresholds in other month contracts, to offer some flexibility for different arrangements to be adopted for different markets.

On the feedback about granting greater flexibility to trading venues over the length of the spot month period for the application of the position limit, we do not consider that relevant trading venues are prevented from setting limits according to the features of the relevant market to that risks can be managed over different/specific periods; taking together MAR 10.2.1L R (1)(a) to set limits in respect of spot and other months' contracts and 10.2.1N G (1) to consider whether to apply multiple limits to spot and other months' contracts. We have also removed references to 'separately' in MAR 10.2.1L R (1)(a) and (2) that might inhibit that flexibility.

Scope – trading venues and participants

Our proposal

4.15 Currently, position limit, position management and position reporting requirements apply to all UK trading venues (RIEs, UK investment firms operating a MTF or OTF and UK branches of third country investment firms operating and MTF or an OTF providing markets in commodity derivatives). Commodity derivative position limits established by relevant trading venues apply regardless of the location of the person at the time of entering into the position and the location execution. In our consultation we did not propose any changes in this regard and this approach is consistent with best international practices.

Summary of feedback

4.16 We received a comment from a respondent about the applicability of the regime to MTFs and OTFs. The respondent argued that should an MTF or OTF admit an instrument that appears to be similar to a critical contract (or seeks to offer any associated "related" contracts), the trading venue would not be able to fulfil the proposed requirements for several reasons. MTFs and OTFs do not know the positions of their market participants and, where relevant, the end client in a chain.

Counterparties may choose not to use a CCP to clear those contracts, or if they did, the trading venue would not know the position data held in any CCP. The respondent suggested applying such requirements to, for example, CCPs as well as other post-trade financial market infrastructures such as trade repositories.

Our response

We note that a swap traded on an MTF or OTF is capable of being classified as a critical contract. Further, in the US, federal limits apply to contracts traded on US exchanges (Designated Contract Markets (DCMs)). Unlike a future, a swap may be traded on multiple platforms and on an OTC basis. Accordingly, if position limits applied to such contracts, to be operable, it would require the MTF/OTF operator to ensure that the contract is listed or admitted to trading by that trading venue and that can only be traded under their systems and/or reported to them.

This suggests that there might be a case to exclude contracts traded on MTFs and OTFs from the scope of position limits. However, in line with the above, we have recognised that in relation to the 14 critical contracts, an MTF or OTF contract is incapable of being considered a related contract. In cases where an MTF or OTF contract achieved a level of criticality, we would not want to be prevented from being able to bring it within scope. Further, given we did not consult on such an exclusion, our rules will continue to refer to 'trading venues'.

Our final rules that list the critical contracts clarify that they are only listed on UK RIEs. At this current stage, we do not envisage contracts listed on MTFs or OTFs being brought into scope of position limit requirements. We do note, however, that broader position management and position reporting requirements continue to apply in respect of all commodity derivatives traded on MTFs and OTFs and where additional reporting requirements apply, this may include a participant's positions in related contracts traded on MTFs or OTFs (see Chapter 7 for more detail).

Framework for setting position limits

Our proposal

4.17 Our proposed rules require trading venues to ensure their position limits remain appropriate and complied with at all times. Position limits should be reviewed at least annually and whenever there is a significant change in deliverable supply, the open interest or any other change that significantly impacts the market. Furthermore, we proposed to require trading venues to establish a methodology for setting position limits in line with criteria prescribed in the handbook and to conduct periodic reviews of the methodology periodically.

4.18 We also outlined the governance arrangements and systems and controls requirements we would expect trading venues to have regard to when developing their position limit setting methodology, setting the levels of position limits and any significant changes to either.

4.19 We also said that trading venues should notify us for agreement in advance of implementing its methodology, setting position limits, or making significant changes to either, providing us with relevant information about how the methodology has been developed and position limits set. In exceptional circumstances, where necessary to maintain fair and orderly markets, a trading venue may not be able to notify us before a position limit takes effect, but in such circumstances, the notification should be as soon as practically possible.

4.20 The precise level of position limits must be transparent, non-discriminatory, and published on a trading venue's website, and specify how they are applied. Trading venues should factor in views from users before setting or modifying each position limit, to the extent possible, and set out when consulting with market participants will not be possible.

Summary of feedback

4.21 Respondents broadly agreed with the framework for setting position limits.

4.22 One respondent asked for clarification what notifications to the market are required upon position limit revisions.

4.23 One respondent sought clarification on the obligation for trading venues to take into account the views of users before setting each position limit to the extent possible. While market participant feedback would be sought through various channels, the respondent wanted clarification that there would not be a requirement to publicly consult on changes to position limit levels.

4.24 One respondent said that the framework should manage the conflict between the relevant trading venue's economic interest and its regulatory obligations.

Our response

We are proceeding with the proposals laid out in CP23/27 outlined above.

Notification requirements in respect of position limit methodologies, setting the level of position limits and any revisions are outlined above.

On the clarification sought about whether public consultation is required when changing a position limit, MAR 10.2.1M R(7) is clear that trading venues must consult relevant participants prior to setting or modifying a position limit unless it is not reasonably practicable to do so, in accordance with its rules.

We acknowledge that in certain circumstances, for example when there is a need to act quickly in line with rapidly changing market conditions, it may not be possible to consult relevant market participants before setting or amending a position limit and we expect trading venues to set out when consultation will not be possible.

We acknowledge the point raised that the framework we set should manage the conflict between the relevant trading venue's business interests and its regulatory functions. We consider this point already addressed by the requirements for trading venues to have regard to broader governance and systems and controls requirements. In addition, trading venues are required to notify us prior to implementation and modification of governance arrangements to be followed, including in relation to position limit setting. This will include allocation of senior management responsibility and policies for managing conflicts (MAR 10.3.4B R(3)).

Methodology for setting position limits

Our proposal

4.25 In CP23/27 we set out certain criteria or factors trading venues should take into account when developing their position limit methodology and setting position limits. These are:

a. Deliverable supply in the underlying commodity
b. Aggregate open interest and its relationship with the deliverable supply
c. Maturity
d. Volatility in relevant markets and ability to risk manage
e. Liquidity in relevant markets
f. Ability to make or take delivery and characteristics of the underlying commodity market

4.26 We explain in paragraph 4.4 and 4.5 above the approach we took in relation to the criteria proposed and how they differ from those in RTS 21 (on which they are based). In the consultation and in the proposed rules we provided guidance on how the criteria or factors should be used by trading venues when calibrating position limits.

4.27 In CP23/27 we asked:

Question 11: ***Do you agree with the criteria trading venues shall consider when developing their position limit setting methodology and when setting position limits? If not, please explain why.***

Summary of feedback

4.28 Respondents broadly agree with the criteria proposed and welcome the approach that allows trading venues to calibrate position limit levels according to the relevant market.

4.29 One respondent asked for confirmation that, when setting position limits, trading venues would have flexibility in setting their methodology for assessing deliverable supply in order to achieve the aims of the position limit regime and would not be required to base this only on individual trading venue inventory.

4.30 Some respondents said that in certain places our proposed guidance was too prescriptive. For example, draft MAR 10.2.1F G (3) references commodity derivatives that have a larger number of separate expiries and that in those circumstances the position limit should be adjusted upward. However, a respondent indicated that there may be specific market conditions where a large number of expiries would require the position limit to be reduced instead of adjusted upward. More generally, the suggestion was made for the criteria to be factors for consideration rather than directing trading venues to adjust the position in any specific direction.

Our response

In relation to the clarification requested on deliverable supply, our rules reference the supply in the underlying commodity that can be delivered by a market participant. They make no reference to a trading venue's inventory, and it is unlikely that a trading venue would store the underlying commodity itself, albeit some trading venues, e.g. in the UK the LME, do have authorised warehouse companies that store LME-registered brands of metal, on behalf of warrant holders. LME warrants are documents that represent an entitlement to a specific lot of LME-approved metal which are relevant for settlement by delivery or receipt of the physical metal.

Our rules will continue not to prescribe the deliverable supply trading venues must use when setting position limits. The type of deliverable supply may be different for different types of commodities and depending on the characteristics of the underlying market, e.g. shipping and storage capacity, and is a function of the ability to deliver the relevant commodity over a specified period of time. Trading venues should consider those factors when setting position limits for spot and other months.

In relation to the comment on the level of prescription in our guidance to the criteria for the calibration of position limits, we use guidance and other materials to supplement rules where we consider this would help firms to decide what action they need to take to meet the necessary requirement. By their nature, they do not necessarily restrict the ability of firms to achieve the same outcomes set out in our rules through different means.

However, in light of the comments about how the application of the criteria should reflect the specific markets they apply to, we have amended our guidance in MAR 10.2.1J G, which reference the criteria set in MAR 10.2.1I R. The guidance provides for the factors that trading venues should have regard to without directing whether they should adjust the position limits upwards or downwards.

Chapter 5

Our response to feedback on exemptions from position limits

Approach

Our proposal

5.1 Consistent with other changes made by FSMA 2023, we proposed that trading venues will be responsible for granting exemptions and monitoring their use in accordance with the framework set in our rules and subject to our supervision. Trading venues' arrangements for granting and monitoring exemptions would need to be consistent with their overall systems and controls obligations under the Recognition Requirements Regulations (RRRs) where they are an RIE and common platform requirements in SYSC and the MiFID Org Regulation where they are operated by an investment firm (albeit we note that only derivatives listed on RIEs are deemed critical contracts).

5.2 Under our proposed rules, firms that want to use an exemption from position limits would have to make an application to the trading venue and provide the information required for each type of exemption as specified under our rules and the trading venues' rulebooks.

5.3 In CP23/27, we set out the different parameters on which each exemption can be granted. As part of their responsibility to administer exemptions, we proposed that trading venues would need to assess the use of each exemption as soon as there is a material change in those parameters and on a regular basis but at least once a year.

5.4 In CP23/27 we asked:

Question 12: ***Do you agree with the approach to granting exemptions outlined above? If not, please explain why.***

Summary of feedback

5.5 Most respondents welcomed the proposals to transfer the responsibility for granting exemptions from position limits to trading venues. However, a couple of respondents raised concerns about having to submit applications to multiple trading venues, potentially using different templates and procedures, which in their view is less straightforward and more burdensome than the approach under current rules. They also mentioned the risk of trading venues using different approaches to granting exemptions.

5.6 Respondents also raised the issue of the transition from the current regime to the new one for firms that already benefit from a hedging exemption. They recommended that positions that currently benefit from an FCA-granted exemption are either automatically grandfathered into the new regime or benefit from a transitional period until the new exemptions are granted.

5.7 Some respondents raised that draft MAR 10.2.3A G, which provides exemptions from position limits set by trading venues, does not cover exemptions from position limits set by the FCA (FSMA 2023 allows the FCA to establish those limits in exceptional circumstances). They asked to clarify whether a person who has obtained an exemption from a position limit set by a trading venue would need to reapply for another exemption if the FCA applied a position limit on the same contract under draft MAR 10.2.2A G.

5.8 Several respondents were also concerned about trading venues not being able to withdraw an exemption they previously granted. It is argued that withdrawing an exemption may be necessary when there is a change to the exempt entity's business model or regulatory status or when the trading venue receives additional information that affects the exempt entity's continued ability to rely on the exemption.

5.9 Concern was also expressed that our rules do not empower trading venues to verify the information provided by firms or compel them to provide information that is necessary for an exemption to be granted. According to the respondent, the current draft rules only allow trading venues to receive information from firms that have been granted an exemption (e.g. through notification of breach or change of circumstances) but does not provide for the trading venues to pro-actively request information.

5.10 Some respondents raised the potential issue when there may be two exemptions on a contract, one monthly exemption from position limits and a separate exemption, for example from expiry limits. Each exemption may be granted using different criteria with one potentially being wider than the other. Notwithstanding indications from trading venues that they would seek to avoid such overlap, it was suggested that trading venues should be required to ensure current position management tools align with the FCA regime and do not result in overlapping regimes unless they are addressing a specific regulatory harm.

Our response

We will proceed with the approach of requiring trading venues to be responsible for the granting and monitoring of exemptions from position limits. In our consultation, we set out the parameters on which exemptions can be granted. Those parameters shall ensure some degree of consistency in the way exemptions are administered and monitored by UK trading venues.

However, it is a feature of the new regulatory regime that certain regulatory functions are discharged by the trading venues that have first-line responsibility to monitor their markets. Given that differences exist between different commodity derivatives markets, it is important

that trading venues retain flexibility to establish the correct parameters to make sure that exemptions are appropriate for the participants and the markets they apply to.

We do not think that exemptions operating at the level of a trading venue will necessarily introduce material additional complexity or significantly increase the cost of complying with the new regime. In the UK and in other jurisdictions (e.g. the US) market participants already deal with trading venue administered exemptions (e.g. exemptions from delivery or expiry limits). We expect trading venues to ensure that the process of granting an exemption is proportionate and effective.

In relation to the grandfathering of existing exemptions, since the parameters for granting a hedging exemption are different, we do not think it is possible to allow persons with an existing hedging exemption to be automatically granted a hedging exemption under the new regime. We have set out a timetable for implementation of the new regime which commence rules that enable trading venues to start accepting exemption applications from 3 March 2025. This is intended to allow trading venues to make the necessary changes to their rules, following consultation with members, to establish the framework on exemptions to be notified by us. Overall, this should give sufficient time to ensure that positions that benefit from the current hedging exemption can continue to do so, where they meet the relevant requirements, under the new regime.

Once our existing obligation in Regulation 16 of the MiFI Regulations to establish position limits is revoked, the position limits will be set by the trading venues as per Regulation 15A. We still retain the power to establish position limits or impose a limit or restriction on particular persons through Regulation 16 and Regulation 28 of the MiFI Regulations respectively. However, we would only expect to use the powers exceptionally and its use would be tailored and have regard to the relevant circumstances and conditions relating to use of the power. When exercising the power provided by Regulation 16, we would expect previously granted exemptions to continue to apply, unless we determine otherwise on the basis of the specific circumstances that prompted the use of our power.

We do not agree that there are limitations regarding the ability of trading venues to request for information in relation to the administration and monitoring of exemptions. Or that trading venues would not be able to withdraw exemptions granted by them. When firms apply to be a member of a trading venue, the applicants agree to be subjected to the authority of the RIE within the limitations of the membership agreements. This will include the authority to seek information or withdraw exemptions as the trading venues must be satisfied that a firm meets the conditions to use an exemption at the point of application and on ongoing basis. Therefore, we do not think it is necessary to add additional provisions on this point.

On the concerns raised about the potential complexity of trading venues applying multiple exemptions for different types of limits (position limits and trading venues set position management limits), trading venues will be expected to clarify if and how existing controls will need to be adapted in light of the new regime to avoid any overlapping regimes unless they are addressing a specific harm. We note again that firms are already subject to FCA set position limits and trading venues set other limits (like expiry and delivery limits).

Exemption ceilings

Our proposal

5.11 We proposed that trading venues consider establishing a limit on the size of a participant's exempt positions, known as an exemption ceiling. The purpose of a ceiling is to ensure that high regulatory expectations apply to trading venues when granting exemptions. The ceiling would mitigate the risk that large exempt positions, if left unchecked, undermine the protections provided by the position limits regime.

5.12 Where a trading venue decides to use this risk mitigation tool, we described in our consultation the types of factors that might be considered to determine the level of the exemption ceiling. They include the participant's current and anticipated activity over the year ahead, their creditworthiness, risk management approach and experience. Trading venues would be responsible to make clear in their rules how they will apply and determine exemption ceilings, including when the size of a ceiling may be amended.

Summary of feedback

5.13 Most respondents sought further clarification on the implementation of exemption ceilings by trading venues. In particular, they argued that exemption ceilings should not constitute a hard limit on the use of an exemption. Some respondents also asked for clarification on whether trading venues are required to treat a firm that has exceeded its exemption ceiling as being in breach of the rules of the trading venue.

5.14 One respondent noted that there is no express power in our rules for trading venues to require an exempt entity to notify them if an exemption ceiling is exceeded, or of a change in circumstances. According to them, while our proposed rules (draft MAR 10.3.3D R) imply this power, it is more appropriate to ensure there is an express power for trading venues to require the exempt firm to notify the trading venue if an exemption ceiling is exceeded.

5.15 Another respondent asked for more guidance on the application of exemption ceilings because there is a risk that where the trading venues consider the factors proposed in the CP, they may not do so in an objective, non-discriminatory manner. The respondent is also concerned that the proposal appears to give discretion to the trading venues

to determine when the size of the ceiling may be amended. It was suggested for the amendment of exemption ceilings to be subjected to due process and that participants should be provided advance notice.

5.16 We also received feedback regarding the requirement for trading venues to assess a participant's creditworthiness as outlined in paragraph 5.27 of CP23/27 and to satisfy themselves that exempt positions can be unwound in times of market stress (draft MAR 10.2.8 R (5)) when determining the size of the exemption ceiling. There are concerns that market participants would not be willing to disclose the information required to trading venues and that creditworthiness is the remit of the CCP and clearing members. According to the respondent, CCPs currently assess the financial risk associated with the size of positions held by the trading venue member through a clearing member in a given account and will make margin determinations accordingly on a daily basis. Their view is that trading venues would not be the appropriate entity to make such a financial risk-based judgement even with the proposed creditworthiness information from a position holder.

5.17 A few respondents considered the requirement for trading venues to notify the FCA when an exemption ceiling is exceeded (draft MAR 10.2.25 R (3)) as unduly burdensome and that it appears to go against the intent of the reform to devolve powers to trading venues. In addition, one respondent expressed concern over the procedures to amend exemption ceilings in the event of market movements as they emphasized the need to be swift and efficient for commercial firms to continue to meet their hedging needs.

5.18 In relation to draft MAR 10.2.25 R (2), we also received a suggestion for the trading venues rulebook to include information on how exemptions may be requested and how they are approved, however the size of the ceiling should be calculated on a case-by-case basis and the details should be worked out bilaterally between the market participant and the trading venue.

Our response

We are proceeding with our proposal in relation to exemption ceilings. They provide an additional tool for the effective risk management of large positions.

We acknowledge that positions which are exempt, such as those established by non-financial firms using commodity derivatives to hedge their commercial risk, do not generally pose the same risk posed by speculative positions that are equivalent in size. However, if left unmonitored they may become too large to be managed properly and expose the market to undue risk where they need to be partly or entirely unwound. While the circumstances in which a non-financial firm will need to unwind their hedges may be rare, they may still occur, and the regulatory regime needs to cater for those circumstances.

In our consultation we said that trading venues are not required to establish exemption ceilings but rather to consider them as a position management tool to ensure that the risks associated with exempt positions are properly managed. Where a firm holds a position above

the trading venue-set ceiling, it will need to reduce its position unless the trading venue is satisfied that the size of the position is compatible with the activity of the relevant firm and an orderly market, in which case the trading venue would need to amend the level of the ceiling in accordance with its rules. Therefore, we do not consider the proposal for trading venues to consider introducing exemption ceilings to be overly burdensome. In addition, this is a position management tool that is currently used by some trading venues.

In terms of express power for trading venues to request for information when an exemption ceiling is exceeded, MAR 10.2.26 R states that a trading venue must ensure that its system can identify which type and when an exemption under MAR 10.2 is being used in a relation to a market participant's position in commodity derivatives. Therefore, the trading venue systems should already cater for the identification of positions which exceed a relevant exemption ceiling. In addition, trading firms have a responsibility to also ensure their activity remains within the conditions the trading venue may impose.

We agree with the feedback that the ceiling should be objective and non-discriminatory, with consideration for each participant. All trading venues are required to establish transparent, objective and non-discriminatory rules governing access to their facilities. We would expect the same standards to apply to the establishment of a ceiling.

The factors we provided in paragraph 5.27 of the consultation provide examples of what trading venues should consider in setting an appropriate exemption ceiling which may include, but is not limited to, the participant's current and anticipated activity over the year ahead, their creditworthiness, risk management approach and experience. We note, however, that the creditworthiness of a participant is a matter that is of particular interest to CCPs. Trading venues are expected to determine the size of the ceiling on the basis of specified objective factors on a case-by-case basis and the details should be determined bilaterally between the applicants and the trading venues.

As described in our consultation, trading venues are required to inform us if the exemption ceiling has been exceeded, and the steps taken to address any risks, we do not consider this notification to be burdensome on trading venues as the information required is information the trading venue has. Further, while the reform devolves powers to trading venues, reporting of the instances where an exemption ceiling is exceeded will support our general supervisory and monitoring capabilities without altering the purpose of a ceiling as a possible risk mitigation tool. Lastly, on the procedures to amend exemption ceilings in the event of market movements, we expect trading venues to specify in their rules a process that enables participants to continue to adequately meet their risk mitigation needs while maintaining orderly markets.

Exemption notifications

Our proposal

5.19 We proposed that trading venues notify us of each exemption granted, including where exemption ceilings have been applied, and to provide us with an annual report of all exemptions granted and instances where exemption ceilings imposed have been exceeded (and steps taken following those instances). Upon request, trading venues should also provide us with relevant information on how the exemptions were granted.

Summary of feedback

5.20 We received a suggestion for trading venues to provide a monthly notification of the exemptions granted instead of notifying us each time an exemption is granted as this would better reflect the respective roles and responsibilities of the FCA and trading venues in operating the future position limits regime.

5.21 One respondent suggested an appropriate balance would be a monthly or quarterly report (rather than real-time) of exemptions granted and ceilings applied. For any instances where exemption ceilings are exceeded, the respondent would support real-time notifications to us.

Our response

We will proceed with our proposal, as per our consultation, for the prompt notification for each exemption granted, including any conditions attached to the exemption such as exemption ceilings. We are also proceeding with our proposal to require trading venues to provide an annual report of all exemptions granted, including any exemption ceilings, positions that exceed those ceilings and steps taken to address those positions.

We maintain our proposal for prompt notification when exemptions are granted – instead of monthly or quarterly notification suggested in the feedback – to ensure that we are provided with timely information, which is relevant to our understanding of how possible position limit breaches are being monitored and enforced. While we have not prescribed the process or what 'prompt' means in practical terms, we expect trading venues to provide us with a simple, prompt notification that would not involve a material administrative burden. We will manage this as part of our supervisory approach. The annual notifications of positions that exceed exemption ceilings, including the steps taken when this occurs, is covered above.

Hedging exemption

Our proposal

5.22 In CP23/27, we retained the current hedging exemption for non-financial firms, but proposed changes aimed at ensuring that that the use of the exemption is consistent with resilient and orderly markets. We proposed that the exemption should only be granted where a trading venue is satisfied that the exempt positions can reasonably be managed.

5.23 In our consultation, we proposed that trading venues must be satisfied that the exempt positions "*…at its estimated highest point in the following year can be unwound, in particular during times of market stress where market liquidity may be constrained, in a way that does not impair orderly markets*". To be able to discharge this obligation, we required trading venues to require a non-financial entity to submit information about its ability to unwind the position.

5.24 We said that trading venues may consider the use of historical market movements when carrying out the assessment of an applicant's ability to unwind its positions. In granting hedging exemptions, trading venues should have a clear overview of the commercial activities of the non-financial firm in respect of the relevant underlying commodity, the associated risks and how commodity derivatives are utilised to mitigate those risks.

5.25 In granting the exemption, a trading venue operator must require the exempt firm to notify it promptly if there is a significant change to any of the information it has provided or a breach of any condition relating to an exemption. The exempt firm is also required to notify a trading venue on an annual basis if it intends to rely on the exemption and provide any changes to the information previously submitted.

5.26 In CP23/27 we asked:

Question 13: ***Do you agree with the approach to the hedging exemption outlined above and the information to be provided to evidence use of the exemption? If not, please explain why.***

Summary of feedback

5.27 The responses on the proposed change to the hedging exemption mainly focused on the requirement for trading venues to assess the non-financial firm's ability to unwind its positions in an orderly way during times of market stress:

- It was suggested that the criteria for a firm to determine its ability to unwind its positions during times of market stress may not be an appropriate metric to grant the exemption. This is because large positions would inevitably result in significant price volatility risk if they are unwound. This would reduce the availability of exemptions to large producers or consumers of commodities.

- Some respondents said it would be difficult for a trading venue to carry out the assessment of the ability of an applicant to manage its positions during times of market stress as the assessment would need to be based on forecasts and assumptions prepared by the applicants and in practice it would be dependent on the actions taken by the entities involved in prevailing market conditions.
- One respondent said that trading venues may not be able to verify the information provided and therefore suggested that they are given supplementary powers to request information on OTC positions being held. Another respondent said that the information required to be provided by firms when applying for an exemption should not be excessive but sufficient to explain the commercial needs of the applicant.
- Another respondent sought clarification for the potentially different interpretations of what constitutes times of market stress between firms and trading venues.
- It was also argued that the risk assessment criteria may inappropriately put trading venues in quasi-regulatory position with respect to their market participants. This is because trading venues do not have the same powers as regulators to require information from their market participants, or the same obligations with respect to confidential treatment of the information. One respondent said that a firm should be able to provide a concise overview of its commercial activities without having to reveal confidential and commercially sensitive information. The respondent does not agree with the introduction of the risk management condition for hedging exemptions.
- Some respondents questioned the need for a trading venue to satisfy itself that a participant can reasonably manage its exempt positions before granting a hedging exemption. According to them, any concerns about failure to manage positions can be more appropriately dealt with using the trading venue's existing position management and other enforcement powers.

Our response

We maintain the position that the granting of exemptions must be based on a strong risk management framework operated by the trading venue. Given that position limits, which are the key protections of the commodity derivatives regulatory regime do not apply to exempt positions, it is essential that there is adequate monitoring of those positions to prevent the risk that their size may undermine fair and orderly markets. While hedging positions are established to reduce the risk arising from the commercial activity of the participant, they can still pose risks to markets.

However, we acknowledge the concerns raised by the respondents in relation to:

- The need for a trading venue to make a specific assessment based on exempt positions at their highest point over the following year in periods of market stress; and
- The need for the non-financial firms to submit supporting information.

We have amended our rules by removing the requirement to assess the position at its highest point over the following year under periods of market stress. However, we are maintaining a risk management condition that requires trading venues to assess whether the position is capable of being unwound in an orderly manner. This is in line with best international practices; the US incorporates a similar risk management condition which requires exempt positions to be established and liquidated in an orderly manner in accordance with sound commercial practices.

Trading venues will be expected to set a framework (in line with MAR 10.2.7 R (2) and MAR 10.2.8 G) that uses appropriate pre-defined metrics to assess whether a position is capable of being unwound in an orderly manner, such as the size of the position relative to the open interest in the relevant market taking into consideration market conditions, including market liquidity. Trading venues would be expected to deny an application for an exemption where it assesses that such positions could not be liquidated in an orderly way.

In light of our revised approach, we are also removing the obligation for non-financial firms to provide relevant information to the trading venue for the purposes of conducting this assessment.

We think our revised approach addresses the concerns that were raised in the consultation while maintaining strong regulatory expectations in relation to the need for trading venues to ensure that the size of exempt positions do not pose undue risks to their markets.

Pass-through exemption

Our proposal

5.28 The pass-through hedging exemption is aimed at financial firms providing risk-mitigation services to non-financial firms hedging their commercial risk. We proposed introducing it to address the limitations in the existing regime where non-financial firms may not be able to find a financial counterparty willing to enter into a commodity derivative because of the risk of breaching the applicable position limit (for which financial firms do not currently benefit from any exemption).

5.29 Our proposal provides a similar relief to the one available in other jurisdictions, for example in the US under CFTC rules. In the consultation we outlined the scenarios under which trading venues would be able to grant a pass-through hedging exemption to financial firms, which are as follows:

- **a.** The financial firm enters into an OTC position with a non-financial firm which is conducting hedging activity and then the financial firm offsets the OTC position by entering into an in-scope commodity derivative contract, or
- **b.** The financial firm enters into an in-scope commodity derivative contract with a non-financial firm where the non-financial firm is using the hedging exemption.

5.30 In both scenarios, the position in the in-scope commodity derivative contract, ie a commodity derivative admitted to trading on the trading venue to which the position limit applies, would not count towards the financial firm's aggregate position. However, in scenario a, the financial firm must obtain a written representation from the non-financial firm that the OTC position qualifies as a valid hedge.

5.31 We also proposed in our consultation that financial firms applying for the exemption shall provide to trading venues a clear and concise overview of the risk-mitigation services it provides in respect of the relevant underlying commodity to non-financial firms. The information provided should at a minimum include current and, where possible, anticipated activity in relation to the following 12 months:

a. The nature and value of a financial firm's risk-mitigation services in the relevant commodity underlying the commodity derivative for which an exemption is required.
b. The nature and value of a financial firm's trading activity and positions in relevant commodity derivatives, including in related OTC commodity derivatives, that relate to providing risk-mitigation services.

5.32 Upon granting the exemption, a trading venue operator must require the relevant firm to notify it promptly if there is a significant change to any of the information it has provided. The relevant firm is also required to notify a trading venue on annual basis if it intends to rely on the exemption and provide any changes to the information previously submitted.

5.33 In CP23/27 we asked:

Question 14: ***Do you agree with the approach to the pass-through hedging exemption outlined above and the information to be provided to evidence use of the exemption? If not, please explain why.***

Summary of feedback

5.34 All respondents supported the introduction of this exemption.

5.35 The feedback we received focused on the issue of the information to be provided to support an application to use the exemption. The comments made were as follows:

- Some respondents questioned the proposed requirement for financial firms to obtain a written representation from the non-financial firm that the OTC position they enter into, and which is being off-set with an in-scope futures contract, qualifies as a valid hedge. Their concern is that entities are often reluctant to give representations with respect to compliance with specific regulatory obligations and further challenges may arise when entities are based overseas. Instead, they proposed that financial firms provide an assertion that they believe the position being hedged is a valid hedge.
- One respondent suggested amending the draft rule to provide that the financial entity should confirm that it has taken appropriate steps to confirm that the position qualifies as a hedging contract. Another respondent said it would be more appropriate for the trading venue to confirm that the OTC positions would qualify as valid hedges based on information provided by the non-financial entity.

- Concern was expressed that the draft rule MAR 10.2.15 R refers to "hedging exemption", which only covers the hedging exemption granted to a non-financial entity by a trading venue with respect to on-exchange transactions, therefore not covering the OTC hedging positions.
- Some respondents said that our proposal assumes that hedging of OTC activity is done on a one-to-one basis. They added that this is not always the case and there may be instances where an OTC exposure is higher or lower than the futures position. According to them the most common scenario would be when the OTC position is reversed but the futures position is gradually unwound depending on market conditions – this would result in a potential mismatch between the futures and OTC position. They sought clarification on when futures and OTC positions would be considered "substantially related", and whether it would constitute a separate assessment from the assessment as to whether the position being offset is a valid hedge.
- A few respondents' wanted clarity on our expectations about a firms' ability to accurately anticipate client hedging activity as it may be difficult to provide information on the anticipated activity of a client.
- Another respondent sought clarification on how trading venues are expected to manage the situation where a financial entity applying for an exemption is doing so in relation to the risk-mitigation services it provides to multiple clients but is unable, because of confidentiality requirements, to identify each of them, and the trading venue cannot accurately identify hedging trades and non-hedging trades. The concern relates to the possibility of positions of anonymised clients being spread across multiple financial entities for which exemptions have been granted, which results in a build-up of risk that is unidentifiable.

5.36 One respondent suggested expanding the exemption to apply to situations where financial firms enter into OTC or physical positions with a non-financial firm for the purposes of financing the non-financial firm (e.g. inventory monetisation), and the financial firm offsets the OTC or physical position by entering into an in-scope commodity derivative contract. Non-financial firms frequently look to monetise their physical inventory to fund working capital or capital expenditure and optimise liquidity. The rationale for trading venues to grant such an exemption is similar to that for the proposed pass-through hedging exemption: there are circumstances where non-financial firms may not be able to find a financial counterparty willing to enter into an inventory monetisation or financing arrangement because hedging such a transaction (ie taking title to the physical commodity) would result in a breach of the applicable position limit for the financial firm. An alternative suggested is to create a new exemption to facilitate non-financial firms' access to commodity-backed financing.

Our response

Based on the feedback received, we will proceed to include the pass-through exemption in the final rules. Given that it is a new exemption, the approach we have taken is to design it in a way that it can be adequately monitored by trading venues and that it does not jeopardise the intended outcomes of the position limits regime.

We note the concern raised about financial firms' ability to obtain written confirmation from non-financial firms that their positions are for hedging activities. This concern was raised in relation to scenario a outlined above. However, in our consultation, we did not prescribe the form of written representation required for non-financial firms to confirm that the OTC positions qualify as a valid hedge. We think this provides sufficient flexibility for industry developed solutions without the need for trade-by-trade representations to confirm that each OTC position qualifies as a valid hedge.

Following our engagement with the industry post consultation, we are of the view that the use of standardised agreements, currently used in the US for the same purpose, is a viable option. Where confirmation is not provided by overseas counterparties, the trading venue will need to consider what alternatives there might be to validate this condition and, where that is not possible, whether the exemption can be granted.

On the suggestion that trading venues should solely rely on financial firms' confirmation that the position qualifies as a hedging contract, and not by evidence provided by the non-financial firm, we are not persuaded that this is a viable solution as it is not clear how the trading venue would be able to validate that assertion to ensure the condition is being met.

While draft rule MAR 10.2.15 R refers to positions that benefit from hedging exemption, we view both scenarios outlined in para 5.34 of CP23/27 as eligible for the pass-through exemption. We acknowledge the concern that "hedging exemption" in our rule may be interpreted as only covering the hedging exemption granted to a non-financial entity by a trading venue with respect to commodity derivatives admitted to trading on that trading venue, therefore not covering the OTC hedging activity. We have therefore clarified MAR 10.2.16 G – for the purposes of MAR 10.2.15 R – that the OTC position being off-set should be in relation to a non-financial firm conducting hedging activity.

With regards to how a trading venue should assess when futures positions are considered to be substantially related to OTC positions, the trading venue is required to ensure that the position undertaken by the firm is for the purpose of providing risk-mitigation services and qualifies as a valid hedge. We have also included in our rules that trading venues should require firms to notify them if there are any significant changes to the firms' positions that would affect the validity of its exemption.

On current and anticipated activity, if a financial firm is unable to accurately anticipate client hedging activity, we would expect the financial firm to make best efforts to provide information with respect to forward looking activity on the basis of activity over the previous 12 months. However, in our final rule MAR 10.2.18 R, the minimum information that the applicant is required to submit to the trading venue operator is a description of nature and value of the commodity derivatives for which an exemption is applied. We also require through MAR 10.2.19 R (1) a financial entity to notify the trading venue promptly if there is

a significant change relevant to the information provided under MAR 10.2.18 R. The trading venue will determine if and how this impacts the continued availability of the exemption or whether it chooses to apply an exemption ceiling.

With regards to how trading venues are expected to manage the situation where financial entities are providing risk-mitigation services to clients that cannot be identified, we would expect the financial entity to be clear upon application about its current and expected size of activities in relation to each client, even where certain clients cannot be named. Standardised agreements should envisage the disclosure of client identities unless there is a legal impediment preventing this. However, the financial firm would need to enter into a standardised agreement (provided this was how it intended to obtain written confirmation that the OTC positions these clients enter are valid hedges) with each of its clients to fulfil the relevant condition. Where necessary, trading venues will need to consider how they should manage the risk from anonymisation of a client's identity by, for example, applying a suitably lower exemption ceiling. Further, any OTC position reporting that the trading venue receives should be used to manage the concern raised.

On the proposal to expand the pass-through exemption to include monetisation of non-financial firms' physical inventory, the broad purpose of the exemption regime is to enable non-financial firms to hedge their commercial activity rather than support other activities, such as non-financial firms' financing needs. Therefore, we will not be expanding the scope of the pass-through exemption beyond our current proposal for now.

Liquidity provider exemption

Our proposal

5.37 The second new exemption we proposed in our consultation is for trading firms fulfilling their obligations under the rules of a trading venue to provide liquidity ('liquidity provider exemption'). The exemption codifies and further develops the approach we took in our supervisory statement at the end of 2020 not to take supervisory or enforcement action for breaches of position limits in these circumstances.

5.38 In the consultation we outlined the criteria for firms to qualify for the liquidity provider exemption:

a. The position arises as part of the firm's obligation as a liquidity provider.
b. The obligations to provide liquidity should be clearly defined by the trading venue and relate to observable metrics of market quality.

c. The position should not be held longer than necessary to discharge those obligations as a liquidity provider and should be reduced as soon as reasonably possible but, in any case, sufficiently before the expiry of the contract.

5.39 Firms applying for this exemption should at least provide information on current activity and where possible, anticipated activity over the year ahead to the trading venue to determine whether an application for the exemption can be granted.

5.40 In CP23/27 we asked:

Question 15: ***Do you agree with the approach to the liquidity provider exemption outlined above and the information to be provided to evidence use of the exemption? If not, please explain why.***

Summary of feedback

5.41 All respondents supported in principle the introduction of this exemption.

5.42 Some respondents wanted further clarity on the documentation required by a liquidity provider that can benefit from the exemption. Concern was expressed that allowing trading venues to determine the documentation required may result in inconsistency and a lack of transparency over the granting of exemptions.

5.43 We also received feedback about the provision of anticipated activity over the year ahead. It is argued that as the role of a liquidity provider is to react rapidly and continuously to market circumstances and client demand, the information required is difficult to provide given the inherent uncertainties surrounding the market. They view that the information the FCA proposes to require as part of the application could potentially be more usefully provided through periodic reporting while the relevant firm relies on the exemption instead of as a condition of relying on the exemption.

5.44 A respondent highlighted that not all exchange-operated liquidity provider programmes have quantified quoting obligations. Instead, some liquidity provider programmes are based on the volume of business undertaken by the liquidity provider. They emphasised that each type of liquidity provider programme – whether quotation-based or volume-based – is designed to achieve the same goal to support and encourage liquidity.

5.45 There was also a suggestion for us to include contractual schemes such as "best efforts" liquidity provider schemes and that the exemption should be available to both financial and non-financial firms.

Our response

The proposal received broad support from respondents, and we will proceed to include the liquidity provider exemption in our final rules. We note that the feedback is largely about the conditions for granting it and the documentation that firms should submit to trading venues when applying for the exemption.

We note the concern on the ability of a firm to supply documentation on its anticipated activity in light of the reactive role of a liquidity provider. Therefore, we have amended our rules to require firms to supply a description of the liquidity the firm provides. A firm may reference its activity from the last 12 months as a basis for this purpose, but we have removed the specific reference to anticipated trading activity for the following year (reflected in our final rule MAR 10.2.24 R).

Regarding the concern that allowing trading venues to determine the documentation required may result in inconsistency and a lack of transparency over the granting of exemptions, we do not consider this to be an issue as the information required will need to reflect the parameters of the exemption. Currently trading venues have internal controls in place to satisfy themselves about compliance by trading firms with their market making schemes. Those controls differ from one another depending on the specific market they apply to. Similarly, the documentation required by the trading venue operators for the purpose of liquidity provider exemption would depend on the market concerned. MAR 10.2.22 R states that the exempt position must be objectively measurable as resulting from a transaction consistent with obligations to provide liquidity. Additionally, MAR 10.2.23 R (2) requires the obligations to provide liquidity are clearly defined and relate to observable metrics of market quality.

We do not think that our rules prevent periodic reporting of a firm's activity, but there must be assessments made before granting the exemption (and at periodic junctures) that would enable a trading venue to be satisfied that a firm meets the criteria before the exemption is granted and that it will be and is being used appropriately. In assessing the information provided by the firms, the trading venues should be able to justify their decisions to us.

The precise parameters of liquidity schemes that trading venues offer vary depending on the specific commodity derivative and market model. In our proposed rules we have decided not to prescribe granular requirements, provided the scheme establishes obligations on trading firms to provide liquidity that are clearly defined and relate to observable metrics aimed at improving market quality. In MAR 10.2.23 R (2), we maintain our proposal to include the depth and tightness of the spread as observable metrics of market quality that trading venues should factor in when granting this exemption. Liquidity schemes only based on volume traded would not, in our view, create obligations that would justify exemption from the position limits regime.

In relation to liquidity schemes based on best efforts, currently market making schemes already provide for circumstances where a market maker is relieved from certain obligations under volatile market conditions. We also made no distinction between financial and non-financial firms in terms of who could apply for a liquidity provider exemption. The exemption is available to both types of firms provided the relevant parameters set in our rules are met.

Financial distress exemption

Our proposal

5.46 In our consultation we made no proposals to introduce a financial distress exemption. However, we received feedback, as described below, to allow a firm to be exempt from position limits in relation to financial distress of another firm.

Summary of feedback

5.47 Several respondents proposed the introduction of a new exemption to be used in emergency situations. Respondents recommended the establishment of an exemption akin to the one available in the US under CFTC rules since January 2021. The exemption allows a market participant to exceed federal position limits, where doing so is necessary to allow that participant to take on the positions of another market participant facing potential default or a bankruptcy situation.

5.48 One respondent argued that whilst the FCA can draw on its broader powers in the event of market turbulence or market participants' financial distress, a trading venue cannot, and it is therefore necessary to have the ability to grant an exemption that is outside the specified three types of exemptions (hedging, pass-through and liquidity provider) we consulted on.

Our response

The financial distress exemption is granted by the CFTC and is available on a case-by-case basis subject to a request made to it. The purpose is to prevent circumstances where the application of position limits would require the rapid liquidation of positions in the market which could reduce liquidity, disrupt price discovery, and increase systemic risk.

The power the CFTC has to grant the exemption applies to a relatively broad set of circumstances which "*…include, but are not limited to, situations involving the potential default or bankruptcy of a customer of the requesting person or persons, an affiliate of the requesting person or persons, or a potential acquisition target of the requesting person or persons*".

We agree that there are circumstances where the need to preserve the protections afforded by the position limit regime must be balanced against other risks to orderly markets and to financial stability. We also acknowledge that in the context of the management of the default of a participant, it may be beneficial from a market integrity perspective, for a firm that is financially sound to assume the positions of the defaulting firm where it is unable to meet its obligations. The sudden liquidation of positions in the market may cause disorderly markets and harm price formation.

We note however that the use of the exemption is unlikely to occur on a frequent basis and that in the US the exemption is granted by the CFTC and not by the trading venue. We also note that before being introduced in 2021, the CFTC could use its general powers to disapply the application of positions limits.

While we agree with market participants that there are circumstances where it may be necessary to exempt a firm from the position limit regime, including where that firms take positions as a result of the default of another firm, we think that those circumstances are infrequent, and that the introduction of this exemption needs to be carefully considered.

In particular, where the power to grant the exemption in the context of financial distress of a firm is exercised by a trading venue, it is essential that the parameters of the exemption are clearly defined. In the US, financial distress is defined broadly as above.

If we introduce a similar exemption in the UK, we would need to identify the specific circumstances where an exemption could be granted by a trading venue. We could, for example, consider linking the granting of the exemption to trading venues' default rules. For RIEs, the RRRs require the RIE to have rules which in the event of a member being or appearing to be unable to meet its obligations in respect of one or more market contracts, enable action to be taken in respect of unsettled market contracts.

We would also need to consider what notifications, if any, we would expect from a trading venue when it grants an exemption for financial distress and what our regulatory expectations would be on the trading venue in relation to assessing the risks of allowing a non-defaulting firm to take a position in excess of the position limit, and whether to set out a plan to require that firm to reduce the position below the position limit.

Since we didn't consult on this in CP23/27, we are not introducing the exemption at this stage. We may consider doing so in due course through a separate consultation. We don't think doing so at a later stage, including after the other changes delivered in this PS are in force, would cause any harm.

Chapter 6

Our response to feedback on position management controls

Scope and method of application of accountability thresholds

Our proposal

6.1 Currently UK trading venues must apply position management controls in relation to any commodity derivatives they offer for trading. The controls must enable a trading venue to monitor open positions, have access to information, and to take appropriate actions, such as requiring a person to terminate or reduce a position. These requirements are set out in REC 2.7A.1 Paragraph 7BA and MAR 10.3. In our consultation we proposed that position management controls should continue to apply to all commodity derivatives admitted to trading.

6.2 An accountability threshold is a specific type of position management control that enables supervisory actions by trading venues when a position is above the threshold. In some cases, the appropriate course of action would be to gather additional information from the participant while allowing it to continue to hold a position above the threshold. In others, it would be to require the participant to reduce the position. UK RIEs already operate accountability thresholds for certain commodity derivatives as part of their position management controls. However, there is no requirement in our framework to do so.

6.3 In CP23/27 we proposed that trading venues must establish accountability thresholds for all critical and their related contracts. We proposed that they would operate in conjunction with position limits. We also proposed that different accountability thresholds should be established for spot and other months and that trading venues should consider whether multiple thresholds should be set at different points within the spot month and/or other months to reflect the greater risk from large positions as the contract nears expiry. The calibration of those accountability thresholds should factor in the features and risks of the market they apply to.

6.4 As with position limits, we proposed that positions relevant for determining whether a firm is below an accountability threshold for the spot month should not be aggregated or netted with those relevant for the threshold applicable to other months. However, our proposed rules were not intended to prevent aggregation across multiple prompts or expiries where that might be necessary, where for example the trading venue establishes thresholds or limits across all months. As for position limits, participants' positions in the critical contract should be aggregated with those in their related contracts.

6.5 In the consultation, we also said that trading venues should monitor all positions in critical and their related contracts against accountability thresholds, including those that benefit from an exemption as large positions may present a challenge for the orderly pricing and settlement of contracts regardless of their purpose. This was one of the risks in the market events leading to the suspension of LME Nickel Futures in March 2022.

6.6 In CP23/27 we asked:

Question 16: ***Do you agree that trading venues should establish accountability thresholds for critical contracts?***

Summary of feedback

6.7 In principle, respondents agreed with the inclusion of accountability thresholds as a position management control. However, concern was expressed that they will act as a second limit alongside position limits because firms holding positions above an accountability threshold would be required – according to our proposal – to provide additional reporting. In their view, this would be akin to setting position limits at a much lower level than is the case now, which would harm liquidity because firms would withdraw from the market.

6.8 One respondent explained that in the US, if a market participant exceeds an accountability level, the exchange is entitled to ask for information regarding the participant's exposures, hedges (if any), and planned trading activity, which can help the exchange understand, for example, how the market participant plans to minimize market impact when exiting a large position. Another respondent said that the notion that an accountability threshold is a second limit is reinforced by the proposed requirement for annual reviews of accountability thresholds which must be sent to the FCA, and which require trading venues to list when trading firms exceed the thresholds.

6.9 A few respondents noted that imposing accountability thresholds alongside position limits would result in a more onerous regime than other regimes globally. Some of these respondents said that this will limit a trading venue's ability to effectively manage risk and put UK markets at a disadvantage to their non-UK competitors, potentially hampering liquidity. Some suggestions for revising the proposals included:

- Position limits should only apply to the spot month where the risk of market abuse is highest, whilst accountability thresholds should only apply to other months, similar to the US regime.

  In support of this suggestion, it was argued that position limits and accountability thresholds achieve the same objective, and position limits in other months under existing MiFID II have not proven to be effective. Further, that it would be more challenging to calculate position limits in other months for contracts that have significant number of delivery months available to trade, such as, the IFEU Brent Crude Futures.

- Trading venues should be provided with discretion to apply accountability thresholds alongside position limits, rather than be required.

- Accountability thresholds should operate excluding any positions that use an exemption from position limits issued by the trading venue. This is because including exempt positions would likely result in frequent accountability triggers, which will cause unnecessary burden for participants operating within the terms of their exemption.

6.10 One respondent supports the application of accountability thresholds as consulted and suggested that the scope (as set out in draft MAR 10.3.3A R (1)) should be extended to include 'related OTC contracts' to allow trading venues to fully exercise their powers under that rule in relation to OTC positions which may be larger than the relevant position in contracts traded on a trading venue.

6.11 One respondent noted that market participants use relevant derivatives traded on trading venues to hedge their OTC positions. A direction to reduce its on-venue position would cause its unhedged exposure to increase, which would add further stress during a volatile market. The respondent suggested the rule should clarify that trading venues may only take actions in relation to positions entered on its own trading venue, ie it should not include related contracts on other UK trading venues, related OTC contracts, or related overseas commodity contracts.

6.12 One respondent was concerned that our proposed approach inhibits trading venues from being able to aggregate positions held across the whole curve. This is from a reading of the language in paragraphs 6.36 and 6.37 of CP23/27 with the use of 'separately' in draft MAR 10.2.1H (1)(a) (which is about position limits and discussed in Chapter 4). The respondent noted that certain trading strategies result in liquidity being spread across the curve making it necessary to aggregate positions in spot and other months to identify manipulation and ensure integrity of markets.

6.13 One respondent suggested clarifying whether the scope of trading venues' powers on position management controls are the same as those on position limits. That is, they both have the same extra-territorial effect as the FCA's powers as provided for in Regulation 26 MiFI Regulations.

6.14 A few respondents wanted clarification that exceeding an accountability threshold doesn't automatically result in a direction by the trading venue to stop trading in contracts covered by the threshold or to reduce positions. In their view, trading venues should only direct members to stop trading or to reduce their positions where there are other concerns regarding market stability, and not solely as a result of exceeding an accountability threshold.

6.15 Some respondents asked for clarification about whether we expect accountability thresholds to apply in addition to existing position management controls, such as expiry limits (which apply for a fixed number of days prior to the expiry of a contract) and delivery limits (restrictions on how much a trader can take to physical delivery of contracts that are subsequently settled).

Our response

We understand that the concerns raised by our proposals on accountability thresholds were largely linked to the fact that we also proposed that firms provide additional reporting of their OTC positions where an accountability threshold was exceeded.

We have now revised our approach on reporting. Under our new rules, exceeding an accountability threshold will no longer automatically trigger additional OTC reporting requirements (see Chapter 7 for more details on how we have finalised position reporting requirements). We consider that this addresses the concerns expressed about accountability thresholds acting as a second hard limit. It should also reduce the burden of accountability thresholds applying to both spot and other months.

In relation to whether our proposed rules impose excessive burdens compared to international practices, we note that the IOSCO Principles (Principle 15 Intervention Powers in the Market) recommend that the relevant market authorities should have position management powers to address disorderly markets in commodity derivatives and such controls are part of international best practices.

In the US, CFTC rules require the application of fixed position limits in the spot months with position management in other months for 16 of the 25 core referenced futures contracts subject to federal position limits. However, under both the US and EU regimes there are contracts for which multiple levels (a position limit and an accountability threshold) may apply to both the spot month and other month period.

- In the EU, position limits apply to both the spot month and other month periods for agricultural commodity derivatives and critical or significant commodity derivatives, most of which are or can be physically delivered. As per EU Delegated regulation – 2022/1299 accountability thresholds are also applied to both periods for commodity derivatives that are physically settled or can be physically settled.
- In the US, position limits apply to both periods for legacy contracts (the 9 physically settled agricultural contracts that were previously subject to limits before the 2020 final rulemaking). These function in parallel to exchange-set limits and/or accountability levels, which cannot be set higher than the relevant federal limit. In practice, this may result in one level per period, but the approach allows for differentiation between contracts according to the risks posed within the relevant market structure.

In our view, large positions, including those arising for hedging purposes may still pose risks to market integrity and, therefore, should be monitored and risk managed. This is consistent with the IOSCO Principles which recommend that the relevant market authorities should be empowered to take action over any position of potential concern. In many jurisdictions, the relevant market authorities apply this approach to all positions on the commodity market, although in certain jurisdictions

this is refined to apply to all positions which exceed a pre-determined accountability limit. Therefore, no distinction is made between exempt positions and other positions.

In the US, CFTC rules do not preclude accountability levels from including exempt positions and an entity whose position exceeds the accountability level is required to consent to comply with actions requested by the exchange, such as to reduce its position. In the EU, it is explained in recital 5 of EU Delegated regulation – 2022/1299 that procedures should be in place to identify all positions held by any person which exceed such pre-determined accountability levels.

Accountability thresholds provide trading venues with an early warning mechanism to identify growing positions, understand whether risks are emerging and determine whether any further action is necessary to manage that risk. Compared to position limits, which cannot be breached, accountability thresholds are a flexible tool to monitor markets and we remain of the view that they help to maintain market integrity in critical contracts. For certain markets those benefits may exist not only for spot months, but across the curve, given that the risks associated with a large position may include difficulty in the orderly liquidation of that position. For example, large short positions were held in the LME 3-month nickel contract (ie in other months) before the market was suspended.

We intend to implement our proposal on the application of both position limits and accountability thresholds in the spot month as consulted since they are most exposed to the risk that arises from large positions.

For the other months period, position limits will continue to be required as they are now. However, trading venues will be required to determine whether accountability thresholds are also necessary to maintain orderly markets for other months, taking into account factors including the relationship or dependence between the pricing of the spot month contract and the pricing of the other months' contract, the volatility of price of the commodity derivative, the historical pattern of large and concentrated positions in other months' contracts, and the frequency and size of breaches of position limits and position management interventions (see MAR 10.3.3D G). This is an approach – which is subject to our supervision – that is more risk sensitive as it differentiates between critical contracts according to the risks posed within the relevant market structure.

We disagree that accountability thresholds should exclude positions that benefit from an exemption, save in the limited circumstance we describe below where a position ceiling is in place, enabling monitoring of the position. We consider that all positions, including those using an exemption from position limits, should be monitored, and assessed from an orderly market perspective.

The main purpose of introducing accountability thresholds is to set high and consistent requirements about the monitoring capabilities of trading venues. We will implement the requirement for trading venues to monitor all positions, including those that are exempt from positions limits, in critical contracts and their related contracts against accountability thresholds.

However, trading venues would not be expected to include exempt positions when assessing against an accountability threshold only where those positions are subject to a relevant ceiling set by the trading venue (see Chapter 5 for further details). This is because an exemption ceiling provides an alternative way for adequately monitoring a participant's positions that benefit from an exemption. The ceiling level should be maintained under review and may change depending on market conditions. We think that this approach would achieve the same objective of monitoring positions against accountability thresholds but reduce the operational burden for trading venues.

On the feedback about actions a trading venue may take in relation to positions entered into outside of the relevant trading venue, REC 2.7A.1 Paragraph 7BA and MAR 10.3 established position management controls in respect of commodity derivatives the trading venue makes available for trading. These requirements enable trading venues to require a person to terminate or reduce a position in relation to derivatives traded on its market and act if the person does not comply. Where appropriate, they may also require a person to provide liquidity back into the market.

We believe these controls, which continue to apply under our new rules, together with enhanced position management requirements, will ensure that trading venues have greater visibility about positions of concern than they have now, and therefore will enable them to intervene in relation to positions held in derivatives listed by them before risks crystallise.

We recognise the strong degree of interconnectedness between OTC and on-venue trading in certain markets. Our power under Regulation 28 of the MiFI Regulations allows us to intervene, including in OTC markets, where necessary. However, given our view that a trading venue's powers in relation to derivatives listed on its market should generally be adequate, we view Regulation 28 as a backstop to the regime of position limits and position management, in place to be used only in circumstances where other tools are insufficient to deliver on our market integrity objective.

We note the concern that powers of trading venues over positions in on-venue contracts could cause an increase in unhedged OTC exposures. When dealing with positions that need to be reduced, we would expect trading venues to consider whether it is appropriate to allow time for firms to manage the risk from connected OTC positions.

We also do not think it is appropriate to act on the suggestion (mentioned above in paragraph 6.11) that our rules should limit the type of positions to which a trading venue's position management powers apply. The scope of trading venues' position management controls set by REC 2.7A.1 Paragraph 7BA and MAR 10.3 should serve as a minimum, but

trading venues may be required to apply further controls to meet their obligations to maintain orderly markets. We expect trading venues to use their suite of position management tools to manage risks to their markets appropriately. In our view the rules we proposed in this regard, which are similar to those that have been in place since 2018, provide sufficient clarity.

Large OTC positions may raise a number of risks, including those related to the orderly management of margin requirements (and their funding) by CCPs. We proposed in CP23/27 for arrangements to be put in place so that information is able flow between the trading venue and CCP where they form part of the same group. This would enhance the CCP's ability to monitor concentrations in client positions, to identify risks that fall within a CCP's remit and to use this information, in addition to their own information gathering, to take appropriate steps to manage those risks in line with existing requirements. We continue to believe such arrangements should be in place as discussed below and provide other ways to ensure risks are managed.

In exceptional circumstances, to advance our market integrity objective, we would consider exercising our power under Regulation 28 of the MiFI Regulations. Regulation 28 allows us to require persons to limit or reduce the size of a position they hold, including an OTC position. As set out at Mansion House 2024, the Treasury intend to give us a fuller power of direction in Regulation 28 to align with changes to the scope of Regulation 27 of the MiFI Regulations, such that it will apply to a broader set of commodity derivatives. The Treasury will draw on existing definitions where possible, for example those in the RAO. This change will allow us to more effectively intervene by requiring a market participant to reduce an OTC position, should we consider it necessary.

Since January 2018 we have not exercised the power in Regulation 28 as it currently stands. It was clearly intended, and that is how we view it, as a backstop to the regime of position limits and position management as mentioned above.

In response to the concern raised in paragraph 6.12, we do not think a trading venue is prevented from taking an approach to position limits and accountability thresholds that allows for aggregation across different periods to assess risks appropriately. Draft MAR 10.2.1H R(2) is based on Article 3 of RTS 21 which has not previously been interpreted in a way that would prevent aggregation. However, in line with our response set out in Chapter 4, we are providing further clarity by omitting both references to 'separately' in MAR 10.2.1L R and note MAR 10.2.1N G (1) to consider whether to apply multiple limits to spot and other months' contracts. Accountability thresholds should be applied in line with positions limits.

In relation to the territorial reach of a trading venue's position limit and position management powers, the rules apply to persons, which in line with position limit requirements apply regardless of the location of the person at the time of entering into the position and the location of

execution. We would not expect a trading venue to position manage only some positions to which position limits apply, therefore the territorial application of those requirements must align. However, to make our expectations clearer we have decided to make an explicit reference to the territorial application of the position management controls that trading venues operate in MAR 10.3.2B G (in line with MAR 10.1.2 G).

Exceeding an accountability threshold is not expected to automatically result in a direction by the trading venue to stop trading in certain contracts or to reduce a position. The actions a trading venue may take once a participant exceeds an accountability threshold will be in accordance with the trading venues rules and their application to the specific circumstances. Trading venues may require information about the nature of the position or may satisfy themselves that the position holder has a legitimate hedging need, and no further intelligence gathering is required. Depending on the circumstances, trading venues can direct a participant not to increase or to reduce a position to secure fair and orderly markets. The key difference with a position limit is the discretion that the trading venue can exercise in relation to a participant's position exceeding an accountability threshold.

Trading venues will be expected to clarify if and how existing controls will need to be adapted, if at all, in light of the requirement to set accountability thresholds. Trading venues must continue to apply position management controls in relation to the commodity derivatives they offer for trading, which enable monitoring of open positions, access to information and the ability to take appropriate actions, such as require a person to terminate or reduce a position.

Methodology for setting accountability thresholds

Our proposal

6.16 In CP23/27 we proposed that trading venues should calibrate accountability thresholds to the specific features of the market they apply to, thresholds must be transparent and accessible to all participants and should apply at the level of the end client. The trading venue's methodology for setting accountability thresholds should have regard to the objectives of the regime and, at minimum, consider certain criteria:

- **a.** The relevant position limit, the factors determining that precise limit and the need to ensure positions can be investigated before risks crystallise.
- **b.** Whether the volume and any required remedial action of accountability threshold excesses indicates that the control is being effective in providing early warning of prospective position limit breaches and enabling action.
- **c.** Periods of market concentration in trading activity.

6.17 Once an accountability threshold has been exceeded, trading venues should consider the following factors as part of their investigation:

a. Historic and anticipated position sizes and risk management capabilities at market participant level taking into account prior knowledge of the market participant and the information received through exemption applications, including anticipated activity and, where relevant, the participant's ability to unwind its positions at their highest point over the year ahead in a way that does not impair orderly markets.
b. The extent and quality of the participant's engagement with the trading venue and response to inquiries.
c. Where a contract is physically deliverable, the complexity of the delivery process relative to that participant's expertise in deliveries for that deliverable commodity contract.
d. An assessment relative to the rest of the market, including peers of comparable type.

6.18 We also proposed that accountability thresholds always remain appropriate and that trading venues should review them at least annually, but also whenever there is a significant change to the relevant position limit or when there is a change that significantly impacts the criteria set out above. The methodology for setting accountability thresholds should also be reviewed periodically and when establishing their framework for accountability thresholds, trading venues shall have regard to its governance and systems and controls requirements in the RRRs and common platform requirements, as applicable.

6.19 Lastly, we proposed that trading venues' systems and controls should enable monitoring of participants' open positions, including those using an exemption from position limits ie all positions using an exemption should be flagged to identify which exemption is being used.

6.20 In CP23/27 we asked:

Question 17: ***Do you agree with the approach outlined above and the factors that should be considered as part of the trading venues' accountability threshold setting methodology? If not, please explain why.***

Summary of feedback

6.21 Some respondents expressed concerns about the extent to which trading venues have discretion to manage participants' positions. They cited draft MAR 10.3.3A R(1)(c) which references the management of positions which are 'excessive or unjustified'. They sought clarity from our rules on what constitutes an excessive position. In particular, whether a position would be deemed excessive simply because it exceeds the accountability threshold, regardless of whether it is justified or not. In this case, it is argued, there would not be any difference between a position limit and an accountability threshold. Some respondents suggested deleting the reference to "excessive" positions, or clarification that trading venues should apply position management powers to positions that are both excessive and unjustified.

6.22 Respondents broadly agreed with the approach outlined for setting accountability thresholds. One respondent asked for clarity on criterion b of paragraph 6.16 above for setting accountability thresholds. The respondent asked whether the threshold would be deemed effective if it is, for example, exceeded frequently or not exceeded at all or where very no action is generally taken once a position is above the threshold. The respondent also asked for clarity on criterion c of paragraph 6.16 above as to the intended meaning.

6.23 A few respondents said the factors that trading venues should consider when assessing the need for further action once a participant exceeds an accountability threshold should be objective and capable of being assessed in a consistent way across all market participants. These respondents either questioned or disagreed with the proposed factor in draft MAR 10.3.3G R(2) which includes the extent and quality of the participant's engagement with the trading venue and response to inquiries. They suggested to limit trading venues' discretion by deleting the criterion.

Our response

We understand the concerns raised regarding proposed MAR 10.3.3A R(1)(c) which references the management of positions which are 'excessive or unjustified'. On the difference between accountability thresholds and positions limits, position limits are set at a fixed level which the relevant trading venue has determined non-exempt positions cannot exceed because the risk is too large. That determination is made regardless of the specific circumstances of individual firms.

Accountability thresholds provide trading venues with an early warning mechanism to identify growing positions that might pose a risk to the objectives of the regime. The trading venue will assess for a specific market participant whether further action is necessary to manage risk. A trading venue may discover following its investigations that together with a participant's related positions, risks are posed to the orderly functioning of its market. Further, a position can be excessive, whether justified or not, even though it is below the relevant position limit, for example, where the size of a position at delivery is too large, even though it's below the position limit. We have clarified MAR 10.3.3A R(2) to read 'taking steps to manage excessive positions or positions which impair the orderly pricing and settlement conditions'.

Regarding clarity sought on criterion b of paragraph 6.16 above on setting accountability thresholds, we set out some examples that may indicate whether the threshold is effective at identifying emerging risk. For example, where accountability thresholds are exceeded repeatedly but no further action is necessary this may indicate the threshold is set too low – regular false positives. On the other hand, where a threshold is never exceeded, it could indicate the threshold is set too high. The number of occasions on which a position exceeds a threshold, and the regularity and extent of necessary remedial action can help indicate whether a threshold is appropriately set. This criterion has been maintained in MAR 10.3.3E R(3).

On the intended meaning of criterion c of paragraph 6.16, the intention is for trading venues to consider when, for example, positions tend to concentrate at different points in time across the curve so that thresholds are set appropriately to account for such dynamics. This criterion has been maintained in MAR 10.3.3E R(4).

We do not agree with the suggestion to delete the extent and quality of the participant's engagement with the trading venue and response to inquiries as a factor for trading venues to consider when setting accountability thresholds. A trading venue should act in an objective and impartial way in line with the general requirements to operate in an objective and transparent manner. We consider that objectivity and impartiality are compatible with a trading venue exercising judgment to assess whether the information provided in response to an inquiry is adequate. Trading venues can further clarify in their rulebook their expectations about the extent and quality of the participant's engagement with the trading venue and response to inquiries.

Risk assessment framework

Our proposal

6.24 In CP23/27 we proposed that trading venues should develop and maintain a risk assessment framework that underpins oversight/surveillance arrangements. The framework should set out:

a. The circumstances in which a market participant will be required to clarify their trading intent and provide additional data reporting.
b. The actions a trading venue may take following investigations.

6.25 Lastly, we said that the steps a trading venue may take if a participant fails to comply with any instructions issued should be specified in the trading venues' rules. Where necessary, trading venues may flag risk concerns to relevant CCPs, as discussed further below.

Summary of feedback

6.26 Respondents did not provide feedback specifically on the development and maintenance of a risk assessment framework. However, feedback was raised, as mentioned above, on a trading venue's ability to take action in markets outside of its own as above.

Our response

We intend to implement our proposals regarding the development and maintenance of a risk assessment framework, which will help trading venues determine the extent to which additional reporting is required for each market in a critical contract it operates.

We have provided our position on the actions a trading venue may take in markets outside of its own above.

Notifications

Our proposal

6.27 In CP23/27 we proposed that trading venues notify us in advance of implementing its methodology and setting the levels of the accountability thresholds. We also proposed notification of subsequent material changes to either the methodology or the thresholds. We said that in exceptional circumstances a trading venue may not be able to notify us in advance, but in such circumstances, we must be notified as soon as possible. We also described the types of supporting information we would expect to receive.

6.28 Separately, we proposed to introduce an annual notification requirement where trading venues evaluate the adequacy and effectiveness of their accountability thresholds and inform us of the number of instances where thresholds have been exceeded, identification of the market participants who exceeded them and what steps were taken to address identified risks.

Summary of feedback

6.29 Two respondents said annual reviews of accountability thresholds, as proposed in MAR 10.3.3A R(3), could be operationally burdensome. They also indicated that, where a threshold is lowered, market participants may have to quickly wind down their positions to remain below it. Accordingly, one respondent suggested that trading venues should review their accountability thresholds only whenever there is a significant change to the relevant position limit or another change that significantly impacts the prescribed criteria.

6.30 Some respondents said the proposal for trading venues to review their accountability thresholds would assist in ensuring that the regime remains effective in meeting its objectives in the light of changing market conditions. However, as described above, some raised the concern that accountability thresholds risk operating as an additional hard limit because of the additional reporting requirements it would trigger under CP23/27 proposals. The annual notifications to the FCA identifying which market participants exceeded those thresholds also reinforces the view that an accountability threshold is a hard limit because firms will not want to be included in it.

Our response

As discussed above, accountability thresholds are different from position limits and it's possible for market participants to hold positions above those levels, subject to the assessment by the trading venue. As we have emphasised above, the purpose of accountability thresholds is to provide trading venues with an early warning mechanism to identify growing positions and opportunity to assess whether further action is necessary to manage risk. We are clear that we do not expect that every time a position exceeds an accountability threshold the person with the position has to reduce it. There will be circumstances where no supervisory actions will be necessary by the trading venue, for example, where the position arises from legitimate hedging by a commercial firm and the position is not of such size as to indicate a risk to market orderliness.

Further, it is expected that where a trading venue considers it necessary to change an accountability threshold, they will need to allow for a period of adjustment to ensure orderly markets. We do not consider there to be a risk to participants in transitioning from one threshold level to another and we therefore plan to implement our proposals.

Chapter 7

Our response to feedback on position reporting

Conditions that trigger additional reporting

Proposal

7.1 In our consultation, we proposed to introduce enhanced reporting from firms to trading venues, including in relation to positions held by firms in related OTC derivatives and derivatives traded on overseas markets. The purpose of additional reporting is to support effective position management. Large positions in derivatives held OTC can affect the orderly operation of the markets operated by trading venues.

7.2 We said that the framework on the provision of data on OTC positions should be risk-sensitive to the features of the relevant market. We proposed the general requirement that trading venues should consider as part of its market risk analysis, whether regular or periodic systematic reporting requirements relating to OTC derivatives are necessary to support their general obligation to monitor the orderliness of their markets.

7.3 We proposed rules requiring trading venues to receive from members and their clients, up to the end client, additional reporting when certain conditions are met. We said that the following market situations would trigger additional reporting to the trading venue:

- **a.** When a participant's aggregated exempt position is equal to or larger than the relevant exemption ceiling for specified commodity derivatives contracts set by the trading venue.
- **b.** When a participant's aggregated position, including exempt positions, in critical and related contracts is equal to or larger than the relevant accountability threshold.
- **c.** As otherwise determined by the trading venue in its risk assessment framework to support its general monitoring of the orderliness of its markets for individual contracts, including by reference to specific features of that market.

7.4 We also said that the duration of reporting should be set by the trading venue as appropriate to the risks posed by the position in the market or as long the person's position is above the relevant exemption ceiling or accountability threshold.

7.5 In CP23/27 we asked:

Question 18: ***Do you agree with the set of conditions that result in the requirement to provide additional reporting? If not, please explain why.***

Summary of feedback

7.6 We received a wide range of responses to our proposals on additional reporting, which reflected a broad spectrum of views.

7.7 Most respondents firmly disagreed with the requirement to provide additional information under the specific circumstances set out in our rules. It was argued that trading venues' discretion should not be constrained by our rules as they are best placed to determine when such information in necessary.

7.8 Very few respondents instead, recommended a more prescriptive regulatory framework than consulted to further strengthen trading venues' powers to compel trading firms to provide such information. In absence of such a framework, it was argued that a trading venue's ability to exercise their position management powers would be weakened.

7.9 Those who disagreed with the proposal to provide additional reporting under specific circumstances raised the following concerns:

- Confidentiality and other prohibitions on disclosure: concerns were raised about trading firms sharing confidential information about their own overall positions with for-profit trading venues. They recommended that such information should only be provided under statutory obligations to a regulator or other public authority. It was also noted that there may be statutory or other regulatory limitations imposed by overseas public bodies preventing members of UK trading venues form disclosing client's confidential information.
- Consequences of failure to report: respondents asked for clarification about the actions trading venues may take if a participant is unable to provide the requested information. For example, if it would constitute grounds for suspending or removing access to the trading venue or to particular services. It was suggested the provision of anonymised information, ie without the identity of the end client, should be deemed compliant with trading venues' rules for positions of overseas clients when local laws prevent the disclosure of such information. It was also suggested that trading venue rules should only impose obligations that don't conflict with normal contractual standards.
- Competition law issues: trading firms expressed significant concerns about competition law issues where trading venues have access to information on trading activity taking place outside of their own markets (OTC positions and positions entered on non-UK trading venues). Some were concerned about the use that will be made of this information and the competitive advantage it may give the trading venues receiving this information. Others noted that such information should be reported directly to the regulator, whereas others recommended that protections are put in place to ensure the information obtained by the trading venue are segregated and used appropriately.
- Fragmented picture of the market and operational complexity: some respondents said that where each trading venue requests only information that it considers to be relevant to its market, using its own format for reporting and setting different frequencies for reporting, this is likely to result in the FCA having a fragmented picture of overall market activity. They also flagged the operational complexities for trading firms providing such information to fulfil different reporting obligations across trading venues.

- Competitiveness of UK markets: some respondents expressed the concern that the additional reporting obligations could have a negative impact on the competitiveness of UK markets and may discourage participation in UK trading venues, which would result in a reduction in liquidity. Onerous position limits and position reporting requirements may also act as a barrier to entry for some market participants, making it preferable to trade OTC or on non-UK trading venues.

7.10 Some respondents asked for clarification on draft MAR 10.3.3F G which allows a trading venue to rely on information it has already 'as a result of services provided otherwise than in the operation of a trading venue'. The concern is that the provision as drafted may limit the information a trading venue can rely on for the purposes of its obligations related to OTC position data.

7.11 Some respondents suggested amending draft MAR 10.3.3D R(2) to provide trading venues with the flexibility to decide how long they need to collect the additional data, instead of a fixed criterion that reporting must continue until the position is below the threshold.

7.12 Some respondents said that proposed MAR 10.3.3E R (3) defers to the trading venues to determine what OTC contracts are in-scope of additional reporting. It is unclear whether a trading venue member would be required to report OTC positions for all its clients where that member firm is not counterparty to the OTC trade.

7.13 Some respondents wanted further guidance on how trading venues should apply the additional reporting requirement, particularly on what is meant by the 'end client'. While trading venues can clarify this in their rulebook, this may lead to inconsistent application where a harmonised approach would enable trading venue members to take a consistent approach when requesting this information from their clients.

Our response

Participants in commodity markets may hold positions in commodity derivatives traded on a trading venue, OTC and on overseas venues. Some of them also hold positions in the physical markets. All of those positions have the potential to impact price formation and market volatility and have implications for the orderly settlement of positions. They are also relevant for the counterparty risk, and hence of particular interest to a CCP.

Knowledge of market participants' OTC positions would assist the trading venue to identify risks before they crystallise. For example, a client may have its positions spread across multiple counterparties, including in related OTC markets, some of which may not be trading venue members. This risk was highlighted by the market events leading to the suspension of LME Nickel Futures in March 2022 where risks could not be fully assessed because of a lack of visibility. We have therefore concluded that the ability to have access to OTC positions is necessary for trading venues to maintain orderly markets in certain commodity derivatives. This regulatory expectation is also consistent with the IOSCO Principles.

Our original approach sought to cater for differences in commodity markets by balancing a suitable level of prescription with trading venue discretion. However, taking into account the feedback received, we have reviewed our approach to the additional reporting of positions.

We are removing the obligation for trading venues to collect additional information – including on OTC positions held by members and their clients – under a specified set of circumstances. We explain below how we plan to do that. First, we take each of the concerns raised above by those respondents that disagree with the mandatory requirement to provide additional reporting under specific circumstances.

On **confidentiality and other prohibitions on disclosure**, we acknowledge that a firms' ability to report the position of the end client may be limited by statutory or regulatory obligations that apply where the end client is established. However, those limitations already exist in relation to the reporting of transactions not just for the reporting of positions in derivatives listed by trading venues, but also more broadly for market abuse purposes under MiFIR or monitoring for systemic risk under onshored UK EMIR.

The regulatory expectation we are establishing is that trading venues should receive the information which is necessary to discharge their functions. When information on positions is not provided, trading venues should be satisfied that it is only because of the regulatory obligations a member, or a client are subject to overseas. In those circumstances, trading venues should consider what mitigants or actions are necessary.

Trading venues should determine the circumstances where failure to provide information amounts to a rulebook breach or grounds for suspending or removing access. Members of trading venues should make clear to their clients what actions a trading venue may take when relevant information is not provided, particularly where failure to provide sufficient information is not justified.

We disagree with the suggestion that trading venues should only impose obligations to their members that are in line with normal contractual standards. The purpose of our framework is to deliver market integrity including in cases where that involves changes to prevailing market standards.

We also acknowledge the concerns raised with regards to **the sharing of information on trading activity taking place outside the trading venues' markets**. However, we do not consider these concerns to be insurmountable. Trading venues, in the UK and overseas, already have access to information about activity carried out by members and their clients that is confidential and of commercial relevance. For example, in assessing whether a member or client's positions are compatible with delivery limits or other position management controls, some trading venues already receive information about positions that the member has in the physical market, OTC, on other trading venues, their trading strategies and other hedging information.

FSMA 2023 transfers principal responsibility for setting and monitoring position limits from the FCA to trading venues. Ensuring that trading venues, that have primary responsibility for monitoring positions and enforcing position limits, have access to relevant information on positions that trading firms hold outside of their markets is consistent with the new regulatory framework.

Some responses suggested that we should establish protections to ensure the information obtained by the trading venue are ringfenced and used appropriately. In the US, with respect to similar data received known as 'regulated data', DCMs, are required to have robust information barriers in place between the exchange's commercial and regulatory functions. We consider that MAR 10.3.7 G and MAR 10.3.3J R provides an equivalent degree of protection. The guidance makes clear that there should be a strong degree of separation between a trading venue's regulatory and commercial functions. The information collected by trading venue about market participants' activity outside of its markets cannot be used to advance its commercial interests.

On the concerns that the proposed approach to reporting would result in **a fragmented picture of overall market activity**, we do not consider this to be an issue preventing the effective establishment of reporting arrangements. Our proposals were aimed at providing trading venues, as first line of defence, with additional information relevant to its markets, to effectively monitor the orderliness of their markets. The receipt of the information by trading venues will not affect the information that the FCA has access to.

Regarding **operational complexity**, currently relevant UK trading venues use their rulebooks to obtain additional information when needed or require regular reporting of OTC data. Therefore, market participants are already required to share information with different trading venues using different formats and frequencies.

We note the concerns raised about **the competitiveness of UK markets** and the potential impact this might have on liquidity. For these reasons we have considered how we can achieve the outcomes we aimed for with our consultation proposal, while making the regime more proportionate to the risk that OTC markets pose to certain commodity derivatives markets. Our final rules allow for greater differentiation between different commodity markets.

Our final rules will not prescribe, as our original proposal did, the specific circumstances or events that trigger mandatory OTC reporting. Instead, they will establish the requirement for trading venues to have the ability to obtain OTC data as part of their regulatory toolkits in line with MAR 10.3.3HR. This toolkit will need to be deployed whenever necessary to assess risks to orderly trading posed by a participant's position, or in light of wider market intelligence.

A trading venue will need to satisfy us that it was deploying the toolkit in a way that was appropriate for the markets it operates in each critical contract. We note that in certain markets, such as metals, the relevant RIE has already established periodic reporting requirements in relation to OTC positions and we expect our framework to support the operation of those arrangements, which we concur can offer significant value to market monitoring. We expect a trading venue's orderly market obligations to be a central factor in how it exercises its discretion to set rules in this area.

Various factors, including the interdependence between exchange-traded and related OTC markets, the size of the relevant OTC derivatives market, the potential impact that market may have on the orderly functioning of the relevant market for the critical contract traded on its systems and the suite of controls a trading venue operates will determine whether more regular OTC data is necessary for a trading venue to monitor its markets.

We will expect trading venues to notify us of their assessment about the need to receive additional reporting in line with MAR 10.3.3H R(5). This should be carried out during the implementation period before the new regime enters into force (and on a regular basis once the new rules are in force). Even where systematic OTC reporting is not felt to be needed (and a related direction, as described below, is also not deemed necessary), relevant trading venues will nonetheless be required to retain the power to collect such information on an ad hoc or episodic basis consistent with maintaining orderly markets.

Regulation 27 of the MiFI Regulations allows us to require persons – whether trading venues and whether trading firms authorised by us or not – to provide us with relevant information, including in relation to OTC positions. As set out at Mansion House, the Treasury intend, in due course, to give us a fuller power of direction in Regulation 27 in the same way as it intends to for Regulation 28 of the MiFI Regulations, enabling relevant trading venues to receive the right level of transparency about OTC positions to allow them to carry out their position management responsibilities effectively.

Compared to the MiFID perimeter, the amended scope would include a broader set of commodity derivatives, in addition to financial instruments to which MiFID applies. The Treasury will draw on existing definitions where possible, for example the RAO definition of a commodity derivative, which would cover physically settled contracts traded on trading venues and lookalikes of those contracts, but also other physically settled contracts that are for investment purposes and not traded on any trading venue.

This change in legislation will give us the power to direct a trading venue to collect a broader set of information on OTC positions from its market participants and to market participants to provide such information to the trading venue to enable more effective monitoring.

The power of direction can be exercised flexibly, including at the level of the single position holder (ie person). While we do not currently intend to exercise the power, we can foresee circumstances in which it may become appropriate for us to consider its use. The principal scenarios in which we may exercise it for a particular critical contract are:

a. Where the relevant trading venue has no arrangements (ie rules and systems) in place for the collection of the information but we believe that such arrangements should be in place to maintain market integrity.
b. Where we consider that it is appropriate for us to supplement a trading venue's arrangements with a further direction, to support the collection of data by the trading venue.
c. Where there are particular circumstances in which we also wish to receive the OTC data for our oversight of UK commodity derivatives markets, given the direction power envisages that data would be provided to us, in such form as we may specify.

Before taking the decision to exercise our power of direction, we would consider the risks posed by OTC markets and the arrangements established by trading venues to mitigate those risks. We would also engage with relevant market participants. If no actions are taken to alleviate our concerns, we would exercise our power subject to an assessment that we would be advancing our market integrity objectives.

To satisfy ourselves that we are advancing our market integrity objective, we would consider whether exercising the power will result in the provision of data that is deemed important to support the relevant trading venue and us in the identification of risks – including manipulative behaviour – that may arise from large OTC positions.

Where we issue a direction, a trading venue would need to provide data to us, though that can be in any form we specify. We would have regard to the need to ensure that any costs imposed by the specific form of reporting are proportionate and justified by the specific use we would make of the information.

We would like to invite views on how we intend to use of our power, particularly where market participants disagree with how we intend to use the power explaining why. If you have comments, it would be helpful to us if you could send them in writing to cp23-27@fca.org.uk by 31 March 2025 where possible.

As we are no longer proposing to include a mandatory requirement to provide additional reporting under specific circumstances, we do not consider it necessary to include draft MAR 10.3.3F G (in the case of a trading venue's ability to rely on OTC position information it already has) in our final rules. Therefore, the suggestion that we delete the words 'as a result of services provided otherwise than in the operation of a trading venue' is no longer relevant. For the same reason, we do not consider it

necessary to include draft MAR 10.3.3D R (2), which is about the duration of time for which additional reporting should apply.

Respondents asked how draft MAR 10.3.3E R (3) would apply to a trading venue member acting as executing/clearing broker for multiple clients in relation to reporting of OTC positions. We would expect OTC position reporting to operate at the level of the position holder, whichever client this may concern. We would expect the member acting as executing/clearing broker to provide at least information on positions with its client, as well as, those positions the client conducts with firms the member is affiliated with. However, given trading venues will specify the level of OTC position reporting required (MAR 10.3.3IR (3)), they should also specify in their trading venue rulebook how those reporting requirements apply.

Some respondents asked for further guidance on how trading venues should apply the additional reporting requirement, particularly on what is meant by the 'end client'. Our expectations are the same as under existing reporting requirements given this is a term used currently in MiFID II. Currently, MAR 10.4.7 D requires members of trading venues to report their own positions as well as those of clients of clients until the end client.

We expect any additional reporting of positions to operate in the same way as position reporting in contracts traded on a trading venue. We encourage the provision of as much disaggregated data as possible, consistent with a European Securities and Markets Authority (ESMA) Q&A on the topic that was agreed when we were still part of ESMA. This means we expect clients and clients of clients until the end client to be identified. However, we acknowledge the practical challenges of obtaining information on the beneficial ownership of positions.

This means that reporting should be at the level of the position holder and as far as possible down the chain of clients until the end client, where relevant. While we acknowledge there may be challenges in, for example, disclosing a client's identity where secrecy laws in certain jurisdictions are in place, every effort should be made to comply with position reporting requirements. Without the ability to identify the ultimate position holders, trading venues will be unable to identify where large positions and risks are building. In these scenarios a trading venue should determine how best it can manage that risk.

Information included under 'additional reporting'

Proposal

7.14 Under the rules proposed in CP23/27 on additional reporting obligations, the information to be reported includes positions in related OTC derivatives and overseas trading venues.

7.15 Further, we said that we will expect trading venues to place a responsibility on members to establish arrangements with their clients that enable access to data at the client level. We recognised that there may be limitations with regards to the information that can be obtained in certain cases, for example, as a result of secrecy laws in certain jurisdictions, but we expect members to take all reasonable steps to comply with trading venue rules.

7.16 We also said that trading venues may also require other additional information in assessing the risks related to a large position, potentially from other sources, for example, on inventories, storage and infrastructure integrity at the locations where deliveries into the relevant contract are made.

7.17 In CP23/27 we asked:

Question 19: ***Do you agree with the information to be reported once the additional reporting requirement is triggered? If not, please explain why.***

Summary of feedback

7.18 Similarly, to the reporting of OTC positions, respondents suggested giving trading venues broad discretion rather than requiring them to collect additional information. They also recommended seeking to ensure that there is no duplication or ambiguity over the nature and extent of the requirements set. To this end, some suggested changing our draft rules (MAR 10.3.3D R and MAR 10.3.3E R) dealing with the conditions that trigger mandatory reporting, the content of information and the period of time when the information needs to be provided into guidance.

7.19 Several respondents raised the same concerns mentioned above regarding the reporting of related positions on overseas trading venues due to competition law issues and operational complexity. They noted that market participants may breach local regulatory requirements by reporting positions without the necessary authorisation from the relevant overseas regulator. One respondent said overseas trading venues are a less likely source of risk than trades executed OTC.

7.20 A couple of respondents noted that imposing a requirement on members to put arrangements in place with clients, enabling ready access to data at the level of the client, as proposed MAR 10.3.4G (2), would require a level of preparation at client onboarding which is not required elsewhere. In their view, the normal requirement is for firms to require clients to co-operate and provide information when required.

7.21 One respondent considers there to be some ambiguity in the draft rules, with the potential risk for inconsistent interpretations. For example, proposed MAR 10.3.3E R (1)(c) requires details of "trades in the underlying commodity", but the term "trade" could refer to a variety of different contracts, which include transactions in financial instruments and in the spot market. Further, the term "underlying commodity" is unclear to the extent that it could include different types of an underlying commodity irrespective of where its traded and its nexus to a particular market. The respondent's preference is to interpret these terms to capture all potentially relevant information.

7.22 Some respondents consider the information to be reported should operate as a menu of choices on which a trading venue can draw on a targeted basis.

Our response

As set out above, we are no longer proposing to require trading venues to establish arrangements to receive additional reporting from trading firms under specific circumstances. Therefore, we have not included draft MAR 10.3.3D R (on the duration of time for which additional reporting should apply) and MAR 10.3.3I R (on the types of information additional reporting may include) has been updated (also further explained in the section above).

We understand the concerns raised in relation to related contracts traded on overseas trading venues. We agree there is greater opaqueness in OTC markets than markets offered by trading venues. The risks that positions traded on overseas trading venues may pose to the relevant commodity derivative market will depend on the features of those markets, the underlying commodity, and the arrangements used by the trading venue to maintain orderly markets. We therefore consider that trading venues should determine whether and when it may require position data in related overseas commodity derivative contracts. Positions in related overseas contracts will follow the same approach as information in trades in the underlying commodity of the critical contract, trades used to settle commodity futures and inventories, storage and infrastructure integrity at locations where deliveries are made (see MAR 10.3.3I R).

As above, any additional reporting a trading venue receives should be separated from its commercial functions and cannot be used for the purposes other than of conducting its regulatory functions (MAR 10.3.7 G and MAR 10.3.3J G).

Definitions of related OTC derivatives and derivatives traded on overseas trading venues

Proposal

7.23 We proposed in CP23/27 to require trading venues to identify related OTC contracts and derivatives traded on overseas trading venues in line with the principles below and for trading venues to inform their participants in a clear and accessible way of the contracts that are in scope of additional reporting requirements:

- Any OTC contract or derivative traded on overseas trading venue for which the settlement price references the settlement price of the critical contract (ie cash lookalike contracts).

- Any OTC contract or derivative traded on an overseas trading venue contract that can result in a position or delivery obligation in the critical contract, its related contracts or in the same underlying as the critical contract, either via exercise, settlement or expiration.

7.24 In CP23/27 we asked:

Question 20: ***Do you agree with the definitions of related OTC contracts and overseas contracts? If not, please explain why.***

Question 21: ***Do you consider that additional reporting requirements should apply at a group level rather than entity level? If not, please explain why.***

Summary of feedback

7.25 Respondents made comments about our approach to the definition of related OTC derivatives and derivatives traded on overseas venues that were in line with those they made about our approach on additional reporting. The requirement to identify related OTC contracts and related overseas commodity derivative contracts was deemed particularly problematic given the scale of some commodity derivatives markets.

7.26 On the definitions specifically, one respondent said it is important that there is discretion for the relevant trading venue to determine which contracts fall within the definition of related OTC contract with the expectation that the scope should be supported with evidence to demonstrate its relevance to the market.

7.27 Respondents asked if the definition of related OTC contract is intended to be broader than the regulatory perimeter and whether Treasury proposes any legislative changes to broaden the scope of the FCA's jurisdiction to include such instruments. It was argued that if the scope is limited to those within the regulatory perimeter, the definition should clarify whether such contracts are limited to those that are commodity derivatives as defined in UK MiFIR or in the RAO.

7.28 One respondent said that the definition is too widely cast, and it should contain an additional limb setting a materiality condition to the effect that the related OTC contracts must be realistically capable of being used to manipulate the critical contract or the deliverable supply under it. They noted that the first condition, which is about the settlement price referencing the settlement price of a critical contract, seems to capture contracts based on indices that include the critical contract's settlement price, as well as spreads, and these are unlikely to be capable of being used to manipulate a critical contract. The second condition brings into the definition contracts with the same underlying as the commodity underlying the critical contract; the respondent recommends that the definition should be refined to refer not only to the same underlying commodity but to the same specification and the delivery location (if part of the contract specification) as that of the critical contract.

7.29 One respondent believes that for contracts traded on overseas trading venues specific provision could be more appropriately tackled at international level, for example, by

updating the IOSCO Principles with the aim of creating a coordinated, consistent, and reciprocal approach to transparency.

7.30 One respondent asked for the following clarifications:

- Whether all market counterparties dealing in overseas trading venues in an instrument deemed "related overseas commodity derivative contract", would come under the additional reporting obligation in the UK whether authorised or not?
- Whether trades concluded on MTF and OTFs may become categorised as "OTC derivatives" under this approach.
- Whether trades executed on platforms deemed by the UK to be equivalent to MTF and OTFs may be treated as in scope of the term overseas trading venue and whether those not recognised as equivalent may not.

7.31 Several respondents do not consider that additional OTC reporting requirements should apply at group level as OTC derivatives transactions may also already be reported to the FCA under onshored UK EMIR. Where the relevant transaction is not within scope of an existing reporting regime, it would be more appropriate to develop a separate reporting regime addressing these transactions. Respondents also noted that if the entity is not the parent undertaking of the relevant group, obtaining information from other group entities may be challenging. Further, concerns were raised that group level reporting could have a negative impact on the competitiveness of UK markets, noting the US as an example where this is not required, and may discourage participation in UK trading venues by non-UK participants.

7.32 A couple of respondents on the other hand said that additional reporting requirements should apply at a group level rather than entity level as without it a party can undermine the underlying objectives of the regime, splitting positions across several subsidiaries to hide risk. Further, risks may be mitigated within a group if different subsidiaries hold positions in opposite directions, but this would not be known without group level information.

Our response

We agree that trading venues are best placed to determine which contracts fall within the definition of a related OTC contract. We expect the identification of those derivatives to be supported by evidence to demonstrate its relevance to the market. We also agree that any additional reporting should not be broader than what is required to maintain market integrity. This will include those OTC contracts which are realistically capable of influencing the pricing or settlement conditions of the critical contract.

An approach that excludes certain types of OTC contracts from the definition of related contract would undermine the protections provided by the regime where those contracts provide a comparable economic exposure as the critical contract. Trading venues would then be unaware of large positions building in relevant markets that might pose a risk to

the orderly trading of their markets. It could also create incentives for participants to take greater positions in such contracts.

Large positions in such contracts may also pose a risk to the wider financial system where prudential risks are not adequately managed. Participants may be incentivised to influence the price of the underlying or the critical contract in other ways to benefit from its position in the OTC contract.

For these reasons, we consider it important to have an approach that helps mitigate these risks.

The definition of a related OTC contract needs to be able to adapt with evolving markets where existing contract types may be modified, or new contract types introduced. We are, therefore, amending the definition to require trading venues to identify the types of contracts that may be subject to additional reporting requirements in line with the following principles:

- OTC contracts which are capable of materially influencing the pricing or settlement conditions of the critical contract or a related contract; and
- Other OTC contracts with a comparable economic exposure as a critical or related contract that should be visible to preserve the objectives of the position limit regime.

Where a trading venue determines that it also requires information in related contracts on overseas trading venues from relevant position holders, we would expect similar principles to be applied to help determine the types of contracts for which the trading venue might need data (see MAR 10.3.8 R).

In response to the other feedback received on the definition of a related OTC commodity derivative, we clarify that:

- The definition goes beyond those contracts that fall within the MiFID perimeter. While position limits are circumscribed to instruments within the MiFID perimeter, we require trading venues, where appropriate, to have regard to related OTC contracts, such as those falling within the broader RAO perimeter, in the case of position management and reporting, reflecting the broader purposes of these aspects of the overall regulatory regime.
- Because of the extensive variety of contracts traded OTC, we agree and expect that trading venue operators would exercise judgment to identify related OTC contracts and, where relevant, related overseas commodity derivative contracts to which additional reporting applies (see MAR 10.3.8 R and MAR 10.3.3I R(3)).

Notwithstanding our amended approach on additional reporting, in response to the clarifications sought by respondents, we have set out our expectations for when trading venues may apply additional reporting requirements:

- Reporting requirements would not apply to all market participants trading on a relevant overseas trading venue. As above, we expect

such reporting requirements to apply at the level of the position holder and as far as possible down the chain of clients until the end client, where relevant. Furthermore, given trading venues will specify the level of OTC position reporting required, they should also specify in their trading venue rulebook how those reporting requirements apply. Where a market participant holds a position on a UK trading venue in a relevant commodity derivative contract, that trading venue may require additional reporting on positions that participant holds on the relevant overseas trading venues.

- Unlike a future, a swap may be traded on multiple platforms and on an OTC basis which can impact the integrity of the market for a critical contract where those markets are related. Therefore, given such positions may be relevant to an assessment of risks posed to the critical contract, related OTC derivative contracts may include those related positions a relevant position holder trades on UK MTFs and OTFs.
- Noting there may be restrictions in some jurisdictions with regard to the provision of certain information, it was not our intention to limit related contracts on overseas trading venues to those for which there may or may not be an equivalence decision in place. However, as above trading venues must determine whether and when it requires information in related overseas commodity derivatives contracts.

On the application of additional reporting requirements at group level, we note both sides of the arguments put forward, particularly the potential impact on the competitiveness of UK markets and the need to effectively identify risks. As explained above, we expect additional reporting requirements to apply at the level of the position holder, however, because of the potential for risks to be concealed by splitting positions across different subsidiaries, trading venues should specify in their rules how additional reporting should apply and whether and when reporting might need to apply at the level of the group. It is in the interest of market participants to ensure markets maintain integrity and where relevant positions might be offset within a group, the trading venue is aware.

Market risk analysis

Proposal

7.33 Given the operational challenges that might arise from the reporting certain related OTC derivatives, which are less standardised than listed derivatives, we did not propose in CP23/27 the format which trading venues should receive additional reporting data.

7.34 As a consequence, we considered that it would be burdensome for trading venues for such information to be sent to us in a systematic way. Instead, we proposed that trading venues perform regular market risk analysis and report that analysis to us.

7.35 We said that the market analysis should be based on the additional reporting data and other data the trading venues has access to, for example, from its CCP or any other market intelligence. The purpose of the market risk analysis is to:

a. Identify risks and potential spillover effects from the underlying physical markets, related OTC markets and related derivatives traded on overseas trading venues.
b. Analyse how those risks could impact contracts traded on their trading venue.
c. Set out how those risks are being managed.

7.36 The frequency at which this analysis is reported to us should be agreed as part of our supervisory approach, but we proposed that trading venues provide it to us at least annually and when there is a significant change in market risk, taking into consideration factors such as size or concentration of positions, including of related markets, settlement or delivery dynamics and alignment with underlying markets.

7.37 Prior to implementation, we expect a trading venue to consider the frequency of additional reporting it requires to enable it to monitor its markets effectively. Also, as a minimum, trading venues should store all additional reporting data in an easy retrievable manner so that it can be retrieved to respond to any specific requests, for example, a request by us for information under s165 of FSMA 2000 and/or questions on the underlying data supporting the market-risk analysis.

7.38 In CP23/27 we asked:

Question 22: ***Do you agree with the proposal for trading venues to develop a periodic market risk analysis report? If not, please explain why.***

Summary of feedback

7.39 Most of those who responded to this question agreed with the proposal for trading venues to develop a periodic markets risk analysis report to be sent to us.

7.40 One respondent, who agreed with the proposal, noted the following points:

- The requirement to perform market risk analysis (under draft MAR 10.3.3H R (1)) is inherently limited by the quality of data received, for example, where certain data is anonymised. Therefore, any risk report on the back of incomplete data must be recognised as such and assessed on that basis.
- Draft MAR 10.3.3H R (3) states that trading venue operators must consider whether regular or periodic systematic reporting requirements relating to OTC derivatives are necessary but does not state whether this reporting covers only members' positions or members' and clients' positions, for example, proposed MAR 10.3.3D refers specifically to members and clients.
- Our rules (draft MAR 10.3.3H R (4) and (5)) clarify when a trading venue is required to make available the risk analysis to the FCA. In view of the lack of a regulatory mandate for a trading venue to intervene in the OTC market, trading venues may also consider the option of submitting its risk analysis to the FCA as soon as they identify an OTC position of potential risk. The severity of the risk posed to the market would dictate how often this information should be submitted.

Our response

We intend to implement the proposal for trading venues (that have admitted to trading critical contracts) to develop a periodic market risk analysis report, which should be sent to us.

We recognise that the report can be only reflective of the data a trading venue receives and the information it has access to.

As mentioned above, this analysis is developed on the basis of data the trading venue has access to, including exchange-traded position data, any additional reporting data it receives and any other market intelligence. As explained above, this should be reported at the level of the position holder, which may relate to clients of members positions, all the way to the end client. Where relevant, the trading venue may provide group level information. We have clarified market risk analysis rules under MAR 10.3.3K R.

On the suggestion that trading venues may also consider the option of submitting its market risk analysis to us as soon as an OTC position of potential risk is identified, while a trading venue may do so where it deems necessary, we expect trading venues to use their suite of position management tools to manage risks to their markets appropriately. If after using those tools there remains to be a risk, we consider this scenario captured by MAR 10.3.3K R(4)(a), which requires the analysis to be made available to us whenever there is a significant change in market risk.

Arrangements between trading venues and CCPs

Proposal

7.41 In our consultation we proposed to require trading venues to establish adequate information sharing arrangements with CCPs clearing commodity derivatives listed on their markets. We said that where a trading venue identifies potential concerns regarding concentration risk or funding liquidity risk, we would expect it to take further steps to address such risks through their position management powers and/or notify the CCP so that the CCP may use this information, in addition to their own information, to take appropriate steps to manage those risks.

Summary of feedback

7.42 We did not receive specific feedback on the proposal to establish information sharing arrangements between trading venues and CCPs.

7.43 However, one respondent said that the proposed rules on sharing information with CCPs do not provide any specific controls or limitation on trading venues in respect of the receipt, ownership, storage, protection from disclosure or protection from use by the trading venue for purposes other than in relation to discharging its regulatory functions.

7.44 The respondent noted certain MiFID provisions applicable to MTFs (such as article 21(2) MiFID Organisational Regulation) that impose general requirements on investment firms to maintain the security, integrity, and confidentiality of information, which are not specifically applicable to regulated markets. They noted, the US regime expressly prevents use of such data by the recipient DCM for purposes not directly connected with the performance of its regulatory functions and applies more general requirements relating to the protection of confidentiality of information. The respondent recommended that UK trading venues, and CCPs receiving the information under our proposed information sharing arrangements, are also prevented from using data for the commercial, business or marketing purposes.

7.45 One respondent queried how the proposal may accommodate the portability of CCP clearing or any introduction of CCP interoperability, such that systemic risk considerations are being built into the new framework.

Our response

Trading venues are responsible for the management of the risks to market abuse and the orderly settlement of transactions. CCPs are responsible for the prudential supervision of large positions held by members and their clients, including their ability to meet margin requirements. Visibility of concentrated positions is necessary for CCPs to manage the liquidity and counterparty risks faced by clearing members.

We therefore intend to implement the proposal for trading venues to share information with relevant CCPs as consulted (see MAR 10.3.7 G). This also helps to support the performance of the distinct and separate risk management functions of a CCP.

We have already clarified that any additional reporting a trading venue receives should be separated from its commercial functions and only used for the purposes of conducting its regulatory functions. In line with this, any information regarding risks from related OTC markets that a trading venue may share with the relevant CCP should also only be used for the trading venues and the CCP regulatory functions and in line with the CCP's existing regulatory requirements.

We do not agree that our approach requires a critical contract to be cleared and that systemic risk considerations are being built into the new framework. The sharing of information between a trading venue and a CCP allows for systemic risk considerations to be identified and addressed by the CCP. We acknowledge that not all UK trading venues and CCPs are part of the same group and this may impact a trading venues ability to establish information sharing arrangements with the relevant CCP.

Commitment of Trader reporting

Proposal

7.46 The Commitment of Traders (CoT) report is a reporting requirement on trading venues to make public weekly aggregate position information (separating long and short positions) for each relevant contract held by different types of firms (including investment firms and credit institutions and commercial undertaking), provided there are 20 or more open position holders in a given contract.

7.47 In our consultation we did not propose to make any change to the CoT reporting. However, we asked for views on whether trading venues are well placed to take a view on whether CoT reports across different contracts provide a useful data source to market participants and publish relevant reports accordingly.

7.48 In CP23/27 we asked:

Question 23: ***Do you agree that trading venues are best placed to determine for which contracts CoT reports should be published or do you have views on how the criteria should be amended? Please explain your answer.***

Question 24: ***Are there any other changes to the public reporting of aggregated positions that you consider appropriate? If yes, please explain the changes you propose and why they are necessary.***

Summary of feedback

7.49 A handful of respondents welcomed the opportunity to share their views on the adequacy of CoT reports and suggested improvements.

7.50 It was proposed to improve the timeliness of publication to increase their value and enhanced granularity in defining the categories. One respondent considers that the CoT category of "Operators with compliance obligations under Directive 2003/87/EC or the trading scheme order 2020" (ie operators of power plants or airline and other industrial firms in energy-intensive sectors) should be applied on a group basis so that entities who hold positions in these contracts on behalf of an affiliate are categorised appropriately.

7.51 One respondent said that CoT reports that were published prior to the introduction of MiFID II were well received by the market and provided relevant and helpful information. The respondent considers the information provided now as less informative and a significant step-backwards in terms of market transparency.

7.52 The main concern was expressed in relation to how members are required to categorise their clients. The categories in MiFID II are viewed as narrower and more limited than the categories that firms were able to rely on prior to MiFID II and there is a lack of consistency in their application among market users, for example, how a client is categorised by different members. In their view, this reduces the quality of the data that can be analysed from the reports; the MiFID II CoT report does not offer the opportunity to identify accurately how individual markets are used. They suggested allowing trading venues to determine the format of their own report, based on the nuances and characteristics of their own market. They also suggested consideration of the reports required by the CFTC to understand other alternatives.

7.53 The CFTC publishes the CoT report providing a breakdown of each Tuesday's open interest for futures and options on futures markets in which 20 or more traders hold positions equal to or above the reporting levels established by the CFTC. The reports in the respondent's view are more user friendly because users can customise, search, filter, and download report data for analysis and trends. In addition, the trader categorisation is based on the predominant business purpose and includes all positions in that commodity, regardless of whether the position is for hedging purposes or not.

7.54 Another respondent suggested CoT reports for critical contracts and any other contracts at the trading venue's discretion (market participants could make requests for the creation of CoT reports on additional contracts and each request considered by the trading venue on its merits).

7.55 One respondent said that any change to the CoT reports should be a matter for trading venues and their market participants, implemented after adequate consultation.

7.56 It was also suggested that CoT requirements should only apply to RIEs that offer critical contracts, and not more broadly to trading venues as smaller firms operating an MTF or OTF would not be in a position to fulfil CoT reporting requirements.

Our response

We note the feedback received in relation to improving the information content of the CoT reports and giving trading venues greater discretion on how granular the information on positions should be reported, depending on the specific commodity derivative. We will consider whether to consult on this issue in due course.

On the disapplication of certain requirements to MTFs and OTFs, please see our response to similar feedback above – we acknowledge that there may be factors that impact the ability of certain trading venues to meet CoT requirements.

Chapter 8

Our response to feedback on perimeter (ancillary activities exemption)

Proposal

8.1 Under MiFID II, the ancillary activities exemption (AAE) provides an exemption from authorisation as an investment firm for firms trading commodity derivatives, emission allowances or derivatives of those instruments.

8.2 Firms can use the exemption where they carry out investment services or activities which are ancillary to their main business. The conditions that a firm must meet before it can assess whether its activities are ancillary are as follows:

- A firm does not execute orders on behalf of clients by dealing on own account unless the client is a client or supplier of the group's main business.
- A firm does not use a high-frequency algorithmic trading technique.
- The main business of a firm's group is not the provision of investment services, services requiring authorisation as a bank, or acting as a market maker in commodity derivatives.

8.3 Once those conditions are met, the firm must determine if the investment services and activities it carries are ancillary, individually and in aggregate, to the main business of the group to which the firm belongs. This is outlined in MiFID RTS 20 and constitutes the Ancillary Activity Test (AAT).

8.4 The AAT has two components which need to be met for a firm's activities to be considered ancillary: (i) the market share test and (ii) the main business test. Firms must perform the AAT annually based on the previous 3 years' data and a firm that concludes it can use the AAE would have previously made an annual notification to the FCA.

8.5 As part of Brexit preparations, Article 72J of the RAO provided a transitional regime in relation to the AAT. It catered for firms that could not perform the market share test because of a lack of publicly available data on the overall size of the market.

8.6 In 2022 we made changes to our Perimeter Guidance Manual and MiFID RTS 20. We clarified that firms did not need to undertake the market share test and if they relied on the derogations from the main business test, as specified in Article 3(2) of MiFID RTS 20, they could use historic data for the overall size of the market. We issued further statements in January 2023 and December 2023 clarifying how firms could determine their use of the ancillary activities exemption for 2023-24 and 2024-25 respectively.

8.7 In May 2023, the Treasury legislated to make changes to the AAE. The FSMA 2000 (Commodity Derivatives and Emission Allowances) Order 2023 introduced 3 main changes which were due to come into effect at the start of 2025, it removed:

- The requirement for firms using the AAE to make an annual notification to us.
- References in the RAO to MiFID RTS 20 with the intention that the AAT as formulated in that RTS should no longer apply.
- Article 72J which means a firm that does not satisfy the revised AAT can no longer rely on the transitional relief that it provided.

8.8 The Treasury provided for a qualitative AAT which was intended to be supported by FCA guidance on how it should be applied. In CP23/27, we consulted on guidance covering the following 2 elements:

- First, confirmation of our understanding of 'ancillary', that it is something 'related' and 'subordinate' to the main business of the group.
- Second, confirmation that firms can have regard to the trading and capital employed thresholds used in the EU delegated regulation to judge what is ancillary.

8.9 While the annual AAE notification requirement will be removed, we stated in the CP that we may on an ad-hoc basis ask firms to provide information that would help us to understand the basis on which they determine they can rely on the AAE.

8.10 In CP23/27 we asked:

Question 25: ***Do you agree with the proposed guidance on the AAT? If not, please explain why.***

Question 26: ***Do you have any other views on the points outlined above?***

Summary of feedback

8.11 Some respondents agreed with our proposed approach to publish guidance on the AAT.

8.12 However, the majority expressed concerns regarding the lack of certainty in relying on guidance to benefit from the exemption instead of rules. For example, concern was expressed that guidance would be insufficient to ensure legal certainty in the event of a bankruptcy case. It was argued that the enforceability of transactions executed by a firm relying on an exemption based on guidance, rather than rules, would be more likely open to challenge by a liquidator.

8.13 Respondents were also concerned with the timelines of the changes, due to enter into force on 1 January 2025. It was argued that there may be insufficient time for those firms which are unable to rely on the AAE to obtain the necessary authorisation by 1 January 2025 given the removal of Article 72J and the transitional relief it provided. Any investment activities and services carried out by a firm that was unable to rely on the AAE and had not obtained authorisation by 1 January 2025 would constitute a breach of the general prohibition in s19 of FSMA and result in any commodity derivatives contracts entered into from that date being potentially unenforceable contracts against counterparties.

8.14 Several respondents said the lack of a test of the significance of a firm's activities (usually referred to as a "de minimis" test) is problematic, particularly for smaller and medium-sized firms and firms without a large physical asset base. Some said the absence of such a test would change the scope of the perimeter as some firms currently using the AAE (in line with the statements mentioned in paragraph 8.6 whereby firms may use historic data for the overall size of the market) would no longer be able to.

Our response

Following the concerns raised above with regard to a lack of legal certainty and timing, the Treasury laid FSMA 2000 (Commodity Derivatives and Emission Allowances) (Amendment) Order 2024 to delay the commencement date of articles 2(2), (3) and (4) of the FSMA 2000 (Commodity Derivatives and Emission Allowances) Order 2023 from 1 January 2025 until 1 January 2027.

In line with these changes, we issued an update clarifying that we will delay the repeal of MiFID RTS 20 for the time being. We will work with the Treasury, and market participants, with the aim to develop an approach that takes into consideration the concerns raised by industry.

We will not be taking forward the proposals made in CP23/27. Instead, RTS 20 will remain in place while a permanent solution is considered. There continues to be a quantitative test for determining whether a firm can benefit from the AAE that will operate as it has done since we left the EU. Previous statements made about how the regime operates in the absence of data on the overall size of the market, as referenced above, will remain operative until the revision of the regime is completed.

Treasury has not delayed the abolition of the annual notification requirement in legislation. As a consequence, firms will no longer be required to systematically notify us on an annual basis on the use of the exemption.

Chapter 9

Addendum to Policy Statement (PS) 24/14

Introduction

9.1 In PS24/14 we finalised our new rules for transparency in bond and derivatives markets. We also finalised, in the new MAR 9A, rules on the pricing of trade data by trading venues and systematic internalisers that had previously been included in the UK version of the MiFIR delegated regulation (Commission Delegated Regulation 2017/565).

9.2 Following the publication of PS24/14 we have had helpful feedback pointing out a small number of areas where we needed to make minor changes to the rules to align them with our policy intent. We are grateful for the feedback received and have now made the necessary changes.

Changes to the Handbook instrument in PS24/14

9.3 The changes we have made to the Handbook instrument published in PS24/14 are as follows.

- First, in MAR 11.3.2 R, which relates to the threshold for the large in scale pre-trade waivers for category 1 instruments, we referred to the thresholds in 'column G of MAR 11 Annex 1R'. We should have referred to 'column E' and have replaced the reference to 'column G' with a reference to 'column E'.
- Second, in TP 2.1 the transitional provisions were expressed as applying to transparency investment firms in the application provision. However, in the detailed provisions only Systematic Internalisers (SIs), who are a subset of transparency investment firms, are referred to. It was our intention that the transitional provisions would apply to all transparency investment firms in respect of their post-trade transparency obligations for trades concluded outside of a trading venue and not just to SIs. We have therefore added two new provisions to TP 2.1 (1.7A R and 1.7B G) (and a cross-reference to 1.7A R in 1.8G and 1.9R). These make clear that the transitional provisions apply to transparency investment firms who are not covered by the provisions applying to SIs.
- Third, in TP 2.1 we have inserted 'pre-trade' in front of transparency in 1.4R to clarify that from 31 March it is only pre-trade transparency that no longer applies to voice and Request for Quote systems operated by trading venues in respect of trading in bonds and derivatives. Post-trade transparency is unaffected.
- Fourth, Approved Publication Arrangements (APAs), had an obligation under the transparency regime in RTS 3 to provide us with data for the purposes of transparency calculations. We need to continue to receive this data until the revised transparency regime for bonds and derivatives takes effect on 1 December 2025. The obligation in RTS 3 was revoked on 1 December 2024 and therefore we

have inserted a reference to APAs in the provisions 1.7A R and 1.7B G in TP 2.1 to make clear the obligation continues until the new transparency regime for bonds and derivatives takes effect.

- Fifth, in the rules relating to trade data in MAR 9 we used the term 'trading venue operator' in MAR 9A 2.2 R (3) when we should have used the term 'systematic internaliser'. We have now substituted the latter term for the former.
- Sixth, in MAR 11, Annex 2, Table 2: Under 'Price conditions', the 'Description/ Details to be published' column refers to 'PNDG' whereas the 'Format to be populated as defined in Table 1' column refers to 'PDNG'. The latter was a typo and has now been replaced with 'PNDG'. Under 'Price', although 'PNDG' has been deleted from the 'Format to be populated as defined in Table 1' column, the 'Description/Details to be published' column still says 'Where price is currently not available but pending, the value should be "PNDG"'. This has now been deleted.

Annex 1

List of non-confidential respondents

We are obliged to include a list of the names of respondents to our consultation who have consented to the publication of their name. That list is as follows:

Association for Financial Markets in Europe (AFME)

British Coffee Association (BCA)

The City of London Law Society (CLLS)

Commodity Markets Council Europe (CMCE)

Chicago Mercantile Exchange (CME) Group

Association of European Energy Exchanges (Europex)

Energy Traders Europe

Federation of European Securities Exchanges (FESE)

Futures Industry Association (FIA)

FIA European Principal Traders Association (FIA EPTA)

ICE Futures Europe

International Swaps and Derivatives Association (ISDA)

The London Energy Brokers' Association (LEBA)

The European Venues & Intermediaries (EVIA)

London Metal Exchange (LME)

Managed Funds Association (MFA)

Standard Chartered Bank

Annex 2

Cost Benefit Analysis

1. The Financial Services and Markets Act (FSMA), as amended by the Financial Services Act 2012, requires us to publish a Cost Benefit Analysis (CBA) of our proposed rules. Specifically, section 138I requires us to publish a CBA of proposed rules, defined as 'an analysis of the costs, together with an analysis of the benefits that will arise if the proposed rules are made'. Section 138S(2)(f) imposes an obligation in relation to technical standards.

2. We undertook a CBA of the proposals set out in CP23/27, encompassing the following:

- to establish a list of critical contracts which require commodity position limits;
- to transfer responsibility for setting limits to the trading venues (as per FSMA 2023) in line with the framework we set;
- to transfer responsibility for granting position limit exemptions to the trading venues;
- to establish two new position limit exemptions;
- to require trading venues to apply accountability thresholds to critical contracts; and
- for related over-the-counter (OTC) contracts and other related contracts traded on overseas trading venues to be reported under certain conditions.

3. In this policy statement, we amended the final rules in relation to additional reporting, including reporting of positions in related OTC derivative contracts, compared to the ones we consulted in CP23/27.

4. We have assessed that the changes would not meaningfully affect the CBA and the assessment of proportionality. The proposals marginally lower the costs but seek to preserve the benefits we envisaged in the CBA provided alongside CP23/27.

5. We are no longer requiring the mandatory reporting of additional reporting, including OTC position data, when certain triggers are met, including where a position exceeds an accountability threshold. Instead, we are requiring trading venues to have the ability to obtain OTC data as part of its overall regulatory toolkit and to satisfy us that it is deploying that toolkit in a way that is appropriate for its markets.

6. We accounted for these costs in the CBA for trading venues as part of CP23/27 and have assessed the change in approach. We estimated that there would be one-off costs of £2m and £600,000-770,000 ongoing, for both trading venues due to position monitoring and the management of information. We envisage that our changes lower the costs but not significantly and therefore our estimates remain appropriate.

7. In the CBA in CP23/27, we said that the number of position holders subject to additional reporting is hard to predict. This uncertainty was reflected in the range of ongoing costs we presented for position holders. We also said that the majority of position holders would not be affected (as most position holders never hold significant positions). While our changes will likely reduce the costs of additional reporting for position holders, we are unable to state the extent of the reduction. Given the uncertainty, we estimated a wide range for the cost in CP23/27. We estimated that position holders would incur total one-off costs of £0.5- 3.0m and total ongoing costs of £1.5– 4m. We believe the ranges estimated continue to reflect the one-off and ongoing costs that will be incurred under the amended approach.

8. For completeness, we provide a table containing the net direct costs to business below. These are unchanged from paragraph 46 in the CBA in CP23/27.

Table 1: New direct costs to firms

	Total (Present Value) Net Direct Cost to Business (X yrs)	EANDCB
Total net direct cost to business (costs to businesses – benefits to businesses)	**£22.4m** (£15.3m to £29.5m	**£2.6m** (£1.8m to £3.4m)

Annex 3

Abbreviations used in this paper

Abbreviation	Description
AAE	Ancillary Activities Exemption
AAT	Ancillary Activities Test
APA	Approved Publication Arrangements
Balmo	Balance of the month
CP	Consultation Paper
CCP	Central Counterparty
CFTC	Commodity Futures Trading Commission
CoT	Commitment of Trader
DCM	Designated Contract Markets
EA 2010	Equality Act 2010
EEOTC	Economically Equivalent OTC Contract
UK EMIR	UK version of European Market Infrastructure Regulation
ESMA	European Securities and Markets Authority
EU	European Union
FSMA	Financial Services and Markets Act
IFEU	ICE Futures Europe
IOSCO	International Organisation of Securities Commissions
IOSCO Principles	IOSCO Principles for the Regulation and Supervision of Commodity Derivatives Markets
G20	Group of 20
LME	London Metal Exchange

Abbreviation	Description
MAR	Market Conduct Sourcebook
MiFI	MiFI Regulations – Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017
MiFID II	The second Markets in Financial Instruments Directive
MiFID RTS 20	UK version of Commission Delegated Regulation 2017/592
MiFID RTS 21	UK version of Commission Delegated Regulation 2017/591
MTF	Multilateral Trading Facility
Order 2023	Financial Services and Markets Act 2000 (Commodity Derivatives and Emission Allowances) Order 2023
OTC	Over-the-counter
OTF	Organised Trading Facility
PS	Policy Statement
RAO	Regulated Activities Order
Regulation 28	Regulation 28 of the MiFI Regulations
RIE	Recognised Investment Exchange
RRRs	Recognition Requirements Regulations
SI	Systematic Internaliser
SYSC	Senior Management Arrangements, Systems and Controls
TAS	Trade at Settlement
UK	United Kingdom
US	United States
WMR	Wholesale Markets Review

Appendix 1

Made rules and technical standards (legal instruments)

COMMODITY DERIVATIVES (POSITION LIMITS, POSITION MANAGEMENT AND PERIMETER) INSTRUMENT 2025

Powers exercised

A. The Financial Conduct Authority ("the FCA") makes this instrument in the exercise of the following powers and related provisions in or under:

(1) the following sections of the Financial Services and Markets Act 2000 ("the Act"):

(a) section 137A (The FCA's general rules);
(b) section 137T (General supplementary powers);
(c) section 139A (Power of the FCA to give guidance);
(d) section 293 (Notification requirements);
(e) section 300H (Rules relating to investment exchanges and data reporting service providers); and
(f) section 395 (The FCA's and PRA's procedures);

(2) regulation 11 of the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges, Clearing Houses and Central Securities Depositaries) Regulations 2001 (SI 2001/995);

(3) regulation 15A and paragraph 7 of Schedule 1 to the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 (SI 2017/701); and

(4) the other powers and related provisions listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook.

B. The rule-making powers referred to above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

C. Annex C and Annex F come into force on 5 February 2025.

D. Part 1 of Annex A and Parts 2 and 4 of Annex B come into force on 3 March 2025.

E. Part 2 of Annex A, Parts 1 and 3 of Annex B and Annexes D and E come into force on 6 July 2026.

Interpretation

F. In this instrument, any reference to any provision of assimilated direct legislation is a reference to it as it forms part of assimilated law.

Amendments to the Handbook

G. The modules of the FCA's Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes in this instrument listed in column (2) below.

(1)	(2)
Glossary of definitions	Annex A
Market Conduct sourcebook (MAR)	Annex B
Decision Procedure and Penalties manual (DEPP)	Annex C
Recognised Investment Exchanges sourcebook (REC)	Annex D

Amendments to material outside the Handbook

H. The Enforcement Guide (EG) is amended in accordance with Annex E to this instrument.

I. The Perimeter Guidance manual (PERG) is amended in accordance with Annex F to this instrument.

Notes

J. In the Annexes to this instrument, the notes (indicated by "**Note**:" or "*Editor's note*:") are included for the convenience of readers, but do not form part of the legislative text.

Citation

K. This instrument may be cited as the Commodity Derivatives (Position Limits, Position Management and Perimeter) Instrument 2025.

By order of the Board
30 January 2025

Annex A

Amendments to the Glossary of definitions

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

Part 1: Comes into force on 3 March 2025

Insert the following new definitions in the appropriate alphabetical position. The text is not underlined.

accountability thresholds	the additional position management controls a *trading venue* applies, in accordance with *MAR* 10.3.3BR, in relation to the *critical contracts* and *related contracts* traded on its systems.
additional reporting	the reporting to a *trading venue operator* additional to that required by *MAR* 10.4, to which *MAR* 10.3.3HR applies.
critical contract	a contract, specified in *MAR* 10.2.1AR, which is a contract in respect of a *commodity derivative*: (a) traded on a *trading venue* in the *UK*; (b) to which *MAR* 10 Annex 2R applies or which is otherwise critical for the purposes of the functioning of the *commodity derivatives* markets in the *UK*; and (c) for which a *trading venue* is required to impose a position limit in accordance with *FCA rules*.
exemption ceiling	a size limit however imposed on a position limit exemption on a risk-sensitive basis in accordance with *MAR* 10.2.27R.
hedging exemption	an exemption granted by a *trading venue operator* to a *non-financial entity* in respect of its position for the purposes of a position limit relating to a commodity derivatives contract.
related contract	a *commodity derivative* contract: (a) the settlement price of which is linked to the settlement price of a *critical contract*, including any *derivative* contract relating to the *critical contract*; and (b) traded on the same *trading venue* in the *UK* as the *critical contract*.
related OTC contract	an OTC derivative contract:

(a) which provides a comparable economic exposure to a *critical contract* or *related contract* traded on a *trading venue* a *trading venue operator* (A) operates, including where its underlying has the same *commodity* for delivery at a location specified in the *critical contract*; or

(b) whose settlement price is linked to or capable of materially influencing the settlement price of a *critical contract* or *related contract* traded on a *trading venue* A operates.

Amend the following as shown.

financial entity (1) (in *MIFIDPRU*) any of the following:

~~(1)~~ (a) …

~~(2)~~ (b) …

~~(3)~~ (c) …

~~(4)~~ (d) …

~~(a)~~ (i) …

~~(b)~~ (ii) …

~~(5)~~ (e) …

~~(a)~~ (i) …

~~(b)~~ (ii) …

~~(d)~~ (iii) …

(2) (in *MAR* 10) any of the following:

(a) a *MiFID investment firm* authorised as such by means of a *Part 4A permission* or an *investment firm* authorised in accordance with *MiFID*;

(b) a *CRD credit institution* or a *credit institution* authorised in accordance with *CRD*;

(c) an insurance undertaking authorised as such by means of a *Part 4A permission* or in accordance with Directive 73/239/EEC;

(d) an assurance undertaking authorised as such by means of a *Part 4A permission* or in accordance with Directive 2002/83/EC of the European Parliament and of the Council;

(e) a *reinsurance undertaking* authorised as such by means of a *Part 4A permission* or in accordance with Directive 2005/68/EC of the European Parliament and of the Council;

(f) a *UCITS* and, where relevant, its *management company*, authorised as such by means of a *Part 4A permission* or in accordance with the *UCITS Directive*;

(g) an *occupational pension scheme* or an institution for occupational retirement provision within the meaning of article 6(a) of Directive 2003/41/EC of the European Parliament and of the Council;

(h) an *alternative investment fund* managed by an *AIFM*:

  (i) authorised as such by means of a *Part 4A permission*;

  (ii) authorised or registered in accordance with the *AIFMD*; or

  (iii) registered as such pursuant to the *AIFMD UK regulation*;

(i) a *CCP* authorised in accordance with *EMIR* or recognised as such by means of a recognition order under Part XVIII of the *Act*;

(j) a central securities depositary authorised in accordance with Regulation (EU) No 909/2014 of the European Parliament and of the Council or recognised as such by means of a recognition order under Part XVIII of the *Act*; and

(k) a third-country entity if it would require authorisation under any of the legislation in (a)-(j) if it was based in the *United Kingdom* and subject to *UK* law.

non-financial entity ~~(as defined in article 2(1) of *MiFID RTS 21*)~~ (in *MAR* 10) a natural or legal *person* other than~~:~~ a *financial entity*.

~~(a)~~ ~~a *MiFID investment firm* authorised as such by means of a *Part 4A permission* or an *investment firm* authorised in accordance with *MIFID*;~~

~~(b)~~ ~~a credit institution authorised in accordance with Directive 2013/36/EU of the European Parliament and of the Council or a *CRD credit institution*~~;

~~(c)~~ ~~an *insurance undertaking* authorised as such by means of a *Part 4A permission* or in accordance with Directive 73/239/EEC;~~

~~(d)~~ ~~an assurance undertaking authorised as such by means of a *Part 4A permission* or in accordance with Directive 2002/83/EC of the European Parliament and of the Council;~~

~~(e)~~ ~~a *reinsurance undertaking* authorised as such by means of a *Part 4A permission* or in accordance with Directive 2005/68/EC of the European Parliament and of the Council;~~

~~(f)~~ ~~a *UCITS* and, where relevant, its *management company*, authorised as such by means of a *Part 4A permission* or in accordance with the *UCITS Directive*~~;

~~(g)~~ ~~an institution for occupational retirement provision within the meaning of article 6(a) of Directive 2003/41/EC of the European Parliament and of the Council or an *occupational pension scheme*~~;

~~(h)~~ ~~an *alternative investment fund* managed by *AIFMs* authorised or registered in accordance with the *AIFMD* or authorised as such by means of a *Part 4A permission* or registered as such pursuant to the Alternative Fund Managers Regulations 2013;~~

~~(i)~~ ~~a *CCP* authorised in accordance with Regulation (EU) No 909/2014 of the European Parliament and of the Council or recognised as such by means of a recognition order under Part XVIII of the *Act*~~;

~~(j)~~ ~~a central securities depositary authorised in accordance with Regulation (EU) No 909/2014 of the European Parliament and of the Council or recognised as such by means of a recognition order under Part XVIII of the *Act*.~~

~~A third-country entity is a non-financial entity if it would not require authorisation under any of the aforementioned legislation if it was based in the *United Kingdom* and subject to *UK* law. [Note: article 2 of *MiFID RTS 21*~~]

Part 2: Comes into force on 6 July 2026

Insert the following new definitions in the appropriate alphabetical position. The text is not underlined.

open interest	the number of lots of a *commodity derivative* that are outstanding on *trading venues* at any point in time.
other months' contract	a *commodity derivative* contract which is not a *spot month contract*.
related overseas commodity derivative contract	a *commodity derivative* contract traded on an overseas trading venue to which *MAR* 10.3.8R applies.
spot month contract	the *commodity derivative* contract in relation to a particular *commodity* whose maturity is the next to expire in accordance with the rules set by the *trading venue*.
weekly report	(for the purposes of *MAR* 10) a weekly report on aggregate positions held by different categories of *persons* for the different *commodity derivatives* or *emission allowances* traded on *trading venues* as described in *MAR* 10.4.3R.

Amend the following as shown.

UK trading venue	for the purposes of *MAR* 9 and *MAR* 10 (and in accordance with article 2(1)(16A) *MiFIR*), a *UK RIE*, a *UK MTF* or a *UK OTF*.
working day	(1) (in *PRR* ~~and~~, *MAR* 9 and *MAR* 10) (as defined in section 103 of the *Act*) any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the *United Kingdom*.
	…

Annex B

Amendments to the Market Conduct sourcebook (MAR)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

Part 1: Comes into force on 6 July 2026

10 Commodity derivative position limits and controls, and position reporting

10.1 Application

Introduction

10.1.1 G (1) The purpose of this chapter is to ~~implement articles 57 and 58 of *MiFID* by setting~~ set out the ~~necessary directions,~~ *rules*, directions and *guidance* relating to position limits, position management controls and position reporting in *commodity derivatives*. The regulatory framework aims to ensure that *commodity derivatives* markets function well, including by mitigating the risk of *market abuse* and supporting orderly pricing and settlement conditions. The framework has regard to supporting the liquidity of *commodity derivatives* markets and enabling these markets to serve commercial users hedging risks relating to their business.

(2) In particular, this chapter sets out the *FCA's* requirements and *guidance* in respect of ~~provisions derived from~~:

(a) ~~articles 57(1) and 57(6) of *MiFID*, which require it to establish limits, on the basis of a methodology determined by *ESMA*, on~~ the size of a net position which a *person* can hold, together with those held on the *person's* behalf at an aggregate group level, at all times, in *commodity derivatives* traded on *trading venues* ~~and *economically equivalent OTC contracts* to those *commodity derivatives*~~;

~~[**Note:** articles 3 and 4 of *MiFID RTS 21*]~~

(b) ~~article 57(8) of *MiFID*, which requires *MiFID investment firms* and *market operators* operating a *trading venue* which trades *commodity derivatives* to apply~~ position management controls in relation to the trading of commodity derivatives;

(c) ~~article 58(1) of *MiFID*, which requires~~ *MiFID investment firms* and *market operators* operating a *trading venue* which trades *commodity derivatives* or *emission allowances* ~~to provide the *competent authority* with~~ providing reports in respect of ~~such~~ positions held; and

(d) ~~article 58(2) of *MiFID*, which requires~~ *investment firms* trading in *commodity derivatives* or *emission allowances* outside a *trading venue* ~~to provide the *competent authority* with~~ providing reports containing a complete breakdown of their positions held through such contracts 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.

(3) The position limit requirements apply to both *authorised persons* and *unauthorised persons*. As such, the *MiFI Regulations* provide for a separate regulatory framework in relation to such *persons*. This framework is set out in:

…

(b) Schedule 1 to the *MiFI Regulations* ('Administration and enforcement of Part 3, 4 and 5'), which provides for the administration and enforcement of position limits established by the *FCA*, and of the reporting of positions in *commodity derivatives*~~,~~ and *emission allowances* ~~and *economically equivalent OTC contracts*~~.

~~This chapter complements and adds to the regulatory framework in the *MiFI Regulations* by establishing the applicable position limits.~~

Scope and territoriality

10.1.2 G (1) The scope of this chapter is as follows: ~~In~~ in respect of position limit requirements in *MAR* 10.2, a *commodity derivative* position limit established by a *trading venue operator* in accordance with *MAR* 10.2.1AR or the *FCA* in accordance with *MAR* 10.2.2D(1) applies regardless of the location of the *person* at the time of entering into the position and the location of execution.

~~[**Note:** article 57(14)(a) of *MiFID*]~~

(2) In respect of position management controls requirements:

(a) the requirements contained or referred to in *MAR* 10.3 apply to *UK persons* operating a *trading venue* which trades *commodity derivatives* ~~in respect of which the *FCA* is the *competent authority*~~; and

…

…

Structure

10.1.3 G This chapter is structured as follows:

(1) *MAR* 10.1 sets out an introduction to *MAR* 10, a description of the application of *MAR* 10 to different categories of *person*~~, an explanation of the approach taken to the *UK* transposition of articles 57 and 58 of *MiFID*, the scope and territoriality of this chapter,~~ and the structure of this chapter.

(2) *MAR* 10.2 sets out the position limit requirements.

(3) *MAR* 10.3 sets out the position management controls requirements.

(4) *MAR* 10.4 sets out the position reporting requirements.

(5) *MAR* 10.5 sets out other reporting, notification and information requirements.

10.2 Position limit requirements

Establishing, applying and resetting position limits

10.2.1 G (1) The following provisions of the *MiFI Regulations* regulate the establishment, application and resetting of position limits:

(-a) Regulation 15A enables the *FCA* to require operators of *trading venues* to establish and apply:

(i) position limits in respect of specified *commodity derivatives*, or *commodity derivatives* of a specified class, that are traded on a *trading venue*; and

(ii) position management controls in relation to the trading of *commodity derivatives*;

(a) Regulation 16(1) ~~imposes an obligation on~~ enables the *FCA* to establish position limits in respect of *commodity derivatives* traded on *trading venues* in the *United Kingdom* ~~and *economically equivalent OTC contracts*~~;

(b) ~~Regulation 16(2) imposes an obligation on the *FCA* to establish position limits 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;~~ [deleted]

…

(d) ~~Regulation 18 imposes an obligation on the *FCA* to ensure that each position limit established by it specifies clear quantitative thresholds for the maximum size of a position in a *commodity derivative* that a *person* can hold;~~ [deleted]

(e) ~~Regulation 19(1) imposes an obligation on the *FCA* to establish position limits in accordance with *ESMA's* methodology, unless an exceptional case exists under Regulation 25 of the *MiFI Regulations*;~~ [deleted]

(f) ~~Regulation 19(2) imposes an obligation on the *FCA* to review position limits it has established in the presence of certain factors;~~ [deleted]

(g) ~~Regulation 19(3) imposes an obligation on the *FCA* to establish a new position limit following its review if it believes that the limit should be reset;~~ [deleted]

…

(j) Regulation 23 imposes general obligations on the *FCA* in respect of the position limits it establishes, so that the limits must be transparent and non-discriminatory, specify how they apply to *persons*, and take account of the nature and composition of market participants and of the use they make of the contracts admitted to trading; and

(k) ~~Regulation 25(1) prohibits the *FCA* from establishing position limits which are more restrictive than permitted under *MiFID RTS 21* unless in exceptional cases where more restrictive position limits are objectively justified and proportionate;~~ [deleted]

(l) ~~Regulation 25(2) to Regulation 25(5) impose obligations on the *FCA* where it establishes position limits which are more restrictive than permitted under *MiFID RTS 21* in accordance with Regulation 25(1) of the *MiFI Regulations*. The obligations are that the *FCA* must publish that position limit on its website, and not apply that position limit for more than six *months* from the date of publication unless further subsequent six-*month* application periods for that limit are objectively justified and proportionate; and~~ [deleted]

…

(2) ~~*MiFID RTS 21* provides a methodology for the calculation of position limits on *commodity derivatives*, and rules for the calculation of the net position held by a *person* in a *commodity derivative*.~~ [deleted]

(3) ~~*MiFID RTS 21* provides that the *FCA* can establish different position limits for different times within the spot month period or other months' period of a *commodity derivative*, and for the spot month period, those position limits shall decrease towards the maturity of the *commodity derivative*, and shall take into account the position management controls of *trading venues*.~~ [deleted]

~~[**Note:** article 57 of *MiFID*]~~

Application of position limits

10.2.1A R A *trading venue operator* must establish a position limit in relation to:

(1) a *commodity derivative* listed in *MAR* 10 Annex 2R and traded on a *trading venue* it operates;

(2) any other contract traded on a *trading venue* it operates which is critical for the purposes of the functioning of the *commodity derivatives* markets in the *UK*, having regard to its characteristics, when notified to do so by the *FCA*; and

(3) any *related contract* as part of the position limit it imposes for the purposes of (1).

10.2.1B G *MAR* 10.2.1AR(3) extends the position limit requirement to other derivative contracts capable of influencing the pricing or settlement conditions of a *critical contract*, including *options*, minis or the disaggregated leg of a spread contract, relating to:

(1) a *critical contract*; or

(2) a *related contract*

10.2.1C R (1) A *trading venue operator* must consider whether there are other contracts which:

(a) offer a comparable economic exposure to that provided by a *critical contract* and may be used to circumvent the purpose of *MAR* 10.2.1AR; or

(b) influence the pricing or settlement conditions of a *critical contract*.

(2) Where a *trading venue operator* identifies a contract to which (1) applies, it must treat that contract as if it were a *related contract* for the purposes of *MAR* 10.

(3) Where a *trading venue operator* identifies a contract to which (1) applies, it must promptly notify the *FCA* of the details of that contract.

10.2.1D G Where a position limit does not apply to a *commodity derivative* contract traded on a *trading venue* it operates, a *trading venue operator* is required to maintain appropriate position management controls in relation to those contracts in accordance with *MAR* 10.3.3R.

10.2.1E R When a *trading venue operator* considers that a contract may amount to a *critical contract* and requires closer monitoring by it or the *FCA* for this purpose, it must promptly notify the *FCA* of the details of the contract having had regard to:

(1) the risk to the settlement method at contract expiry;

(2) the size of the *commodity derivative* market compared with the underlying *commodity* and the robustness of the reference price used to settle contracts;

(3) the type of underlying and the impact on non-financial end-users;

(4) the size of the market, including factors such as *open interest*, traded volumes, and the number and variety of market participants;

(5) changes in volatility and liquidity; and

(6) its use for circumventing the purpose of *MAR* 10.2.1AR.

10.2.1F G When it decides that a contract other than one to which *MAR* 10.2.1AR(1) applies amounts to a *critical contact*, the *FCA* will notify market participants of this using a notice on its website at www.fca.org.uk.

10.2.1G G (1) For a period of at least 45 *days* beginning with the date on which the *FCA* publishes the notice in *MAR* 10.2.1FG, market participants can comment on the proposed determination by submitting a response to the *FCA*.

(2) Having considered market participants' responses, the *FCA* will publish the outcome of its consultation in a notice. Depending on the outcome, the notice will stipulate the date from when the contract becomes a *critical contract*.

(3) The *FCA* may shorten the procedures in (1) and (2) in exceptional circumstances, in the interests of protecting and enhancing the orderly operation of markets.

10.2.1H R A *trading venue operator* must establish and apply a position limit no later than the date from when the contract becomes a *critical contract*.

10.2.1I R When setting a position limit in respect of a *critical contract*, a *trading venue operator* must have regard at least to:

(1) deliverable supply in the underlying *commodity*;

(2) aggregate *open interest* and its relationship with deliverable supply;

(3) maturity of the *critical contract*;

(4) volatility in the price of the *commodity derivative* and in the underlying *commodity*;

(5) liquidity, including:

(a) aggregate traded volumes of the *critical contract* and the underlying of the *critical contract*;

(b) aggregate traded volumes of the *related contracts*, *related OTC contracts* and *related overseas commodity derivative contracts*; and

(c) the number, size and type of the market participants; and

(6) the ability of market participants to make or take delivery and the characteristics of the underlying *commodity* market, including transportation, delivery, storage and settlement of the *commodity*.

10.2.1J G For the purposes of discharging its obligation under *MAR* 10.2.1IR, a *trading venue operator* should consider:

(1) the degree to which deliverable supply in the underlying *commodity* can be restricted or controlled or if the level of deliverable supply is low relative to the amount required for orderly settlement;

(2) whether the deliverable supply in the underlying *commodity*:

(a) is used as the deliverable supply for other commodity derivatives; or

(b) is small when compared to the *open interest*;

(3) for a *spot month contract*, the maturity of the contract;

(4) for *other months' contracts*, the length of their maturities and the number of separate expiries;

(5) the extent to which heightened volatility in the *commodity derivative* market and in the underlying *commodity* may impact the ability of market participants to unwind their positions in an orderly way; and

(6) any position limit applying in a jurisdiction other than the *United Kingdom* to contracts similar to the *critical contract*.

10.2.1K G A *trading venue operator's* assessment of the underlying *commodity* market for the purposes of *MAR* 10.2.1IR(6) should include:

(1) the storage or settlement of the *commodity* having regard to its physical properties and any geopolitical factors, where relevant;

(2) The method of transportation and delivery of the *commodity*, including the capacity constraints of any specified delivery points;

(3) the structure, organisation and operation of the market, including any seasonal fluctuations in physical supply;

(4) the number, size and type of market participants providing risk management, delivery, storage, settlement and any other key services; and

(5) the size of positions held by market participants over a period of time relative to stock availability in the underlying *commodity*.

10.2.1L R (1) A *trading venue operator* must apply its position limits in respect of *critical contracts* to:

(a) *spot month contracts* and *other months' contracts*; and

(b) the net positions held by a *person*, together with those held on its behalf, at an aggregate group level.

(2) A *trading venue operator* must require that a *person* determine the net position it holds in a *commodity derivative* for both *spot month contracts* and *other months' contracts*.

(3) A *trading venue operator* must require that:

(a) where a *person* holds both long and short positions in any *critical contracts* or *related contracts*, the *person* net those positions (and no other positions in other *commodity derivatives*) to determine its net position other than where (4) applies;

(b) a position to which an exemption in *MAR* 10.2 applies is not aggregated for the purposes of (1)(b);

(c) a *parent undertaking* determines its net position by aggregating its own net position and the net positions of each of its *subsidiary undertakings* except where (3)(d) applies; and

(d) the *parent undertaking* of a *manager* of a collective investment undertaking must not aggregate the positions in *commodity derivatives* in any collective investment undertaking where it does not in any way influence the investment decisions in respect of opening, holding or closing those positions.

(4) A *trading venue operator* must not permit the netting of positions in relation to a *related contract* where it considers this will increase the likelihood of disorderly pricing or settlement conditions.

(5) Where (4) applies, a *trading venue operator* must inform the relevant members, participants or clients, and describe how their positions should be aggregated for the purposes of discharging their obligation to meet the position limit imposed by the *trading venue operator* in accordance with *MAR* 10.2.1AR.

10.2.1M R A *trading venue operator* must:

(1) publish its position limits and apply these on a non-discriminatory basis;

(2) maintain arrangements designed to enable it to ensure *persons* comply with position limits relating to a *critical contract* traded on its *trading venue* at all times, regardless of the location of the *person* at the time of entering into the position;

(3) ensure the position limits on a *trading venue* it operates remain appropriate at all times;

(4) review its position limits at least once every year and whenever there is a significant change in deliverable supply or *open interest*, or a change which significantly impacts the commodity derivatives market;

(5) establish and maintain a methodology for applying position limits in respect of *critical contracts*;

(6) notify the *FCA* prior to imposing a position limit unless it is not reasonably practicable to do so;

(7) consult with its members, participants or *clients* prior to setting or modifying a position limit unless it is not reasonably practicable to do so, in accordance with its rules; and

(8) publish in a clear and accessible manner a list of *related contracts* for each *critical contract* traded on its systems.

10.2.1N G (1) A *trading venue operator* should consider whether to apply different limits in respect of either a *spot month contract* or *other months' contract*, at different times during their contractual duration, when discharging its obligations under *MAR* 10.2.1AR. For example, a lower limit may need to be applied within the *spot month contract* as the contract moves closer to expiry.

(2) A *trading venue operator* should have regard, as applicable, to:

(a) *recognition requirements*, including systems and controls, internal audit, ensuring orderly markets and promotion and maintenance of standards; or

(b) *common platform requirements*,

when developing methodologies for setting position limits.

10.2.2 D (1) A *person* must comply at all times with *commodity derivative* position limits established by the *FCA*, published at www.fca.org.uk.

(2) A direction made under (1) applies where a *commodity derivative* is traded on a *trading venue* in the *United Kingdom*.

(3) Position limits established under (1) shall apply to the positions held by a *person* together with those held on its behalf at an aggregate group level ~~(subject to the *non-financial entity* exemption in regulation 17(1) of the *MiFI Regulations*)~~.

(4) Position limits established under (1) shall apply regardless of the location of the *person* at the time of entering into the position.

(5) ~~Position limits established under (1) prior to 3 January 2018, will apply from 3 January 2018.~~ [deleted]

~~[**Note**: articles 57(1) and 57(14) of *MiFID*; and *MiFID RTS 21* in respect of *ESMA's* methodology for *competent authorities* to calculate position limits]~~

10.2.2A G The *FCA* may exceptionally, by giving directions, establish position limits in respect of *commodity derivatives* to which position limit requirements imposed by *trading venues* apply.

~~Non-financial entity exemption~~ Position limits exemptions

10.2.3 G ~~(1)~~ ~~Regulation 17 of the *MiFI Regulations* regulates the position limit exemption applicable to positions in a *commodity derivative* held by or on behalf of a *non-financial entity* which are objectively measurable as reducing risks directly relating to the commercial activity of that *non-financial entity*, and which is approved by the *FCA* in accordance with the relevant criteria and procedures. Regulation 17(1) imposes an obligation on the *FCA* to disregard such positions, when calculating the position held by such entities in respect of a *commodity derivative* to which a position limit applies.~~ [deleted]

~~(2)~~ ~~Regulation 17(2) of the *MiFI Regulations* enables the *FCA* to receive applications from *non-financial entities* for the purposes of obtaining an exemption from the position limits which it sets and in such form as the *FCA* may direct.~~

~~(3)~~ ~~*MiFID RTS 21* stipulates detail on positions qualifying as reducing risks directly related to commercial activities, and the application for the exemption from position limits.~~

~~(4)~~ ~~*MiFID RTS 21* clarifies that a *non-financial entity* shall notify the *FCA* if there is a significant change to the nature or value of that *non-financial entity's* commercial activities, or its trading activities in~~

~~*commodity derivatives*. The obligation arises where the change is relevant to the description of the nature and value of the *non-financial entity's* trading and positions held in *commodity derivatives* and their *economically equivalent OTC contracts* in a position limit exemption application it has already submitted. In this case, a *non-financial entity* must submit a new application if it intends to continue to make use of the exemption.~~

~~[**Note:** article 57(1) of *MiFID*]~~

Part 2: Comes into force on 3 March 2025

10.2 Position limit requirements

…

Non-financial entity exemption

10.2.3 G …

10.2.3A G A *trading venue operator* can receive applications from *non-financial entities* and *financial entities* for the purposes of obtaining an exemption from the position limits it sets. The different types of exemptions and relevant criteria and procedures are set out in *MAR* 10.2.6R to *MAR* 10.2.28G.

Non-financial entity exemption application

10.2.4 D ~~A *non-financial entity* must complete the application form in *MAR* 10 Annex 1D for approval to be exempt from compliance with position limits established by the *FCA* in accordance with *MAR* 10.2.2D(1).~~ [deleted]

10.2.5 G …

10.2.6 R A *trading venue operator* may determine that *a non-financial entity's* position for the purposes of a position limit does not include a position it holds, or one held on its behalf, which is:

(1) objectively measurable as reducing risks directly relating to its commercial activity; and

(2) approved by the *trading venue operator* setting the position limit in accordance with:

(a) the relevant criteria and methods in *MAR* 10.2.7R; and

(b) the relevant procedure in *MAR* 10.2.9R to *MAR* 10.2.10R.

10.2.7 R A *trading venue operator* may make the determination in *MAR* 10.2.6R where it is satisfied that the following criteria are met:

(1) a position held by a *non-financial entity*:

(a) reduces the risks arising from the potential change in the value of assets, services, inputs, products, commodities or liabilities that the *non-financial entity* or its group owns, produces, manufactures, processes, provides, purchases, merchandises, leases, sells, or incurs or reasonably anticipates owning, producing, manufacturing, processing, providing, purchasing, merchandising, leasing, selling or incurring in the normal course of its business; or

(b) qualifies as a hedging contract pursuant to *UK-adopted IFRS*; and

(2) the position held by the *non-financial entity* is capable of being unwound in an orderly way.

10.2.8 G For the purposes of discharging the obligation in *MAR* 10.2.7R(2), a *trading venue operator* should consider its own rules and appropriate metrics, such as the size of the position relative to the open interest in the relevant market and market conditions, including liquidity.

10.2.9 R When making a determination in accordance with *MAR* 10.2.6R, a *trading venue operator* must require a *non-financial entity* to submit to it at least the following information, at the time of its application and in relation to the following 12 *months*, which demonstrates how the position reduces risks directly relating to the *non-financial entity's* commercial activity:

(1) a description of the nature and value of the *non-financial entity's* commercial activities in the *commodity* underlying the *commodity derivative* for which an exemption is sought;

(2) a description of the nature and value of the *non-financial entity's* activities in the trading of and positions held in the relevant *commodity derivatives* traded on *trading venues* and in *related OTC contracts*;

(3) a description of the nature and size of the exposures and risks in the *commodity* which the *non-financial entity* has or expects to have as a result of its commercial activities and which are or would be mitigated by the use of commodity derivatives; and

(4) an explanation of how the *non-financial entity's* use of commodity derivatives directly reduces its exposure and risks in its commercial activities.

10.2.10 R A qualifying risk-reducing position taken on its own or in combination with other derivatives is one, for the purposes of *MAR* 10.2.6R, for which the *non-financial entity*:

(1) describes the following in its internal policies:

(a) the types of commodity derivative contract included in the portfolios used to reduce risks directly relating to commercial activity and their eligibility criteria;

(b) the link between the portfolio and the risks that the portfolio is mitigating; and

(c) the measures adopted to ensure that the positions concerning those contracts serve no other purpose than covering risks directly related to the commercial activities of the *non-financial entity*, and that any position serving a different purpose can be clearly identified; and

(2) is able to provide a sufficiently disaggregated view of the portfolios in terms of class of commodity derivative, underlying *commodity*, time horizon and any other relevant factors.

10.2.11 R A *trading venue operator* must require a *non-financial entity* to notify it:

(1) promptly if there is a significant change to the nature or value of the *non-financial entity's* commercial activities or its trading activities in *commodity derivatives*, and the change is relevant to the information required in *MAR* 10.2.9R;

(2) promptly of a breach of any condition relating to an exemption; and

(3) in any event, on an annual basis, of its intention to rely on the exemption or otherwise, and supplying any changes to the information previously submitted in accordance with *MAR* 10.2.9R.

10.2.12 R A *trading venue operator* must notify the *FCA*:

(1) promptly of an exemption granted to a *non-financial entity* in accordance with *MAR* 10.2.6R, including any conditions such as an *exemption ceiling* attached to the exemption; and

(2) on an annual basis of all exemptions from position limits, granted by it to *non-financial entities*, including:

(a) any *exemption ceilings*;

(b) positions that exceeded those *exemption ceilings*; and

(c) steps taken to address resulting risks.

10.2.13 R A *trading venue operator* must review exemptions from position limits granted to *non-financial entities*:

(1) at least on an annual basis; and

(2) whenever it receives a notification as described in *MAR* 10.2.11R.

Pass-through hedging exemption

10.2.14 R A *trading venue operator* may determine that a *financial entity's* position for the purposes of a position limit does not include a position it holds or one held on its behalf for the purposes of enabling a *non-financial entity* to benefit from the *hedging exemption*.

10.2.15 R A *trading venue operator* may determine that a *financial entity's* (A's) position for the purposes of a position limit does not include a position it holds or one held on its behalf when it:

(1) arises under a *commodity derivative* traded on a *trading venue*; and

(2) is entered into by A on a *trading venue* for the purpose of off-setting the risk arising from a contract with a *non-financial entity* (B) facilitating hedging activity by B.

10.2.16 G Positions for the purposes of *MAR* 10.2.14R may include a position in a contract a *financial entity* (A) enters into on a *trading venue* with a *non-financial entity* (B) to enable B to benefit from the *hedging exemption*. For the purposes of *MAR* 10.2.15R, they may also include a position in a contract entered into on a *trading venue* by A to offset an OTC position it has entered into with B, when B conducts hedging activity.

10.2.17 R A *trading venue operator* may only make the determination with regard to *MAR* 10.2.15R when a *financial entity* has obtained written confirmation from a *non-financial entity* that the position entered into facilitates hedging activity.

10.2.18 R When making a determination in accordance with *MAR* 10.2.14R or *MAR* 10.2.15R, a *trading venue operator* must require a *financial entity* to submit to it at least the following information at the time of its application and where possible in relation to the following 12 *months*:

(1) a description of the *financial entity's* risk-mitigation services in the *commodity* underlying the *commodity derivative* for which an exemption is applied; and

(2) a description of the *financial entity's* trading activity and positions in *commodity derivatives* for which an exemption is applied, including in OTC commodity derivatives that relate to providing risk-mitigation services.

10.2.19 R A *trading venue operator* must require a *financial entity* to notify it:

(1) promptly if there is a significant change relevant to the information set out in *MAR* 10.2.18R; and

(2) on an annual basis of its intention to rely on the exemption or otherwise, and supplying any changes to the information previously

submitted in accordance with *MAR* 10.2.18R, including information relating to the period for the next 12 *months*.

10.2.20 R A *trading venue operator* must notify the *FCA*:

(1) promptly of an exemption granted to a *financial entity* in accordance with *MAR* 10.2.14R or *MAR* 10.2.15R, including any conditions such as an *exemption ceiling* attached to the exemption; and

(2) on an annual basis of all exemptions from position limits granted by it to *financial entities*, including:

(a) *exemption ceilings;*

(b) positions that exceeded those *exemption ceilings*; and

(c) steps taken to address resulting risks.

10.2.21 R A *trading venue operator* must review all exemptions from position limits granted to *financial entities*:

(1) at least on an annual basis; and

(2) whenever it receives a notification as described in *MAR* 10.2.19R(1).

Liquidity provider exemption

10.2.22 R A *trading venue operator* may determine that a position limit does not apply to a position held by a *person* for a position that is objectively measurable as resulting from a *transaction* consistent with obligations to provide liquidity on a *trading venue*.

10.2.23 R A *trading venue operator* may make the determination in *MAR* 10.2.22R where:

(1) it receives an application from a *person* for these purposes;

(2) the obligations to provide liquidity are clearly defined and relate to observable metrics of market quality, including depth and tightness of the spread;

(3) the position arises from discharge of the *person's* obligation as a liquidity provider; and

(4) the exemption is temporary in duration and the *person* reduces its position as soon as reasonably practicable prior to the expiry of the contract.

10.2.24 R A *trading venue operator* must ensure that an application for the purposes of *MAR* 10.2.22R provide as a minimum a description of the liquidity the applicant provides in respect of the *commodity derivatives* for which an exemption from a position limit is being requested.

10.2.25 R A *trading venue operator* must notify the *FCA*;

(1) promptly of an exemption granted to it in accordance with *MAR* 10.2.22R, including any conditions such as an *exemption ceiling* attached to the exemption; and

(2) on an annual basis of all exemptions from position limits granted by it to in accordance with *MAR* 10.2.22R, including:

(a) any *exemption ceilings*;

(b) positions that exceeded those *exemption ceilings*; and

(c) steps taken to address resulting risks.

All exemptions

10.2.26 R A *trading venue operator* must:

(1) provide the *FCA*, upon request, with such information as the *FCA* may reasonably require to enable a fuller understanding of the basis for granting an exemption to which *MAR* 10.2 applies;

(2) store information in an easily retrievable way that is accessible for future reference by the *FCA* for the purposes of (1); and

(3) ensure that its systems can identify:

(a) when an exemption under *MAR* 10.2 is being used in relation to a market participant's position in a *commodity derivative*; and

(b) which exemption is being used.

10.2.27 R (1) A *trading venue operator* may establish an *exemption ceiling* for the purposes of any of the exemptions in *MAR* 10.2 where to do so would mitigate the risk that large positions otherwise pose to the orderly pricing and settlement of a *critical contract*.

(2) A *trading venue operator* must explain in its rules how it will apply and determine an *exemption ceiling*, including how and when it may be amended.

10.2.28 G The use of an *exemption ceiling* can enable a *trading venue operator* to ensure that exempt positions are subject to appropriate management and oversight, to mitigate risks to orderly trading and settlement.

Part 3: Comes into force on 6 July 2025

10.3 Position management controls

…

Position management controls applicable to UK market operators operating a trading venue

10.3.2 G ~~A *UK market operator* operating a *trading venue* which trades *commodity derivatives* must apply position management controls on that *trading venue*, in accordance with paragraph 7BA of the Schedule to the *Recognition Requirements Regulations*, as inserted by the *MiFI Regulations*.~~ [deleted]

~~[**Note:** article 57(8) to 57(10) of *MiFID*]~~

10.3.2A R A *UK market operator* is subject to *MAR* 10.3.3R as if it were a *UK firm operating a multilateral trading facility* or an *OTF* and references to an *MTF* are to a *regulated market* or an *MTF* that it operates.

10.3.2B G A *trading venue operator's* position management controls should have regard to the application of position limit requirements, as described in *MAR* 10.1.2G.

Position management controls applicable to UK firms and UK branches of third country investment firms operating an MTF or OTF

10.3.3 R …

~~[**Note:** article 57(8) to 57(10) of *MiFID*]~~

Additional position management controls and accountability thresholds

10.3.3A R A *trading venue operator* must apply additional position management controls in relation to the *critical contracts* and *related contracts* traded on its systems:

(1) ensuring the effective and timely identification of substantial positions, including positions subject to an exemption referred to in *MAR* 10.2; and

(2) taking steps to manage excessive positions or positions which impair orderly pricing and settlement conditions, including reducing or terminating these where a *person* fails to comply with a request to manage their positions further to exceeding an *accountability threshold*, *exemption ceiling* or otherwise.

10.3.3B R (1) A *trading venue operator* must apply *MAR* 10.3.3CR to *spot month contacts* traded on its systems.

(2) A *trading venue operator* must consider whether it is necessary to apply *MAR* 10.3.3CR to *other months' contracts* traded on its systems in order to maintain an orderly market.

10.3.3C R (1) A *trading venue operator* must set *accountability thresholds* below position limits enabling early identification of substantial positions and risk of breaching a position limit.

(2) A *trading venue operator* must ensure that its *accountability thresholds* are adequate, transparent, non-discriminatory, clear and accessible to market participants, at all times. It must also specify how the controls apply to *persons*.

(3) A *trading venue operator* must keep the adequacy of its *accountability thresholds* under review on a regular basis and notify the *FCA* promptly of these reviews, including:

(a) whenever there is a significant change to either the position limit or one or more of the factors in *MAR* 10.3.3ER; and

(b) at least on an annual basis.

(4) A *trading venue operator* must explain when notifying the *FCA* in accordance with (3):

(a) how it had regard to the factors in *MAR* 10.3.3ER; and

(b) the relationship between the *accountability threshold* and corresponding position limit.

(5) A *trading venue operator*, for the purposes of its annual notification under (3)(b), must inform the *FCA* of:

(a) how many times an *accountability threshold* has been exceeded, including the duration of each occurrence;

(b) the identity of the market participant; and

(c) the steps then taken by the *trading venue operator* to address the risks identified.

(6) A *trading venue operator* must in respect of *critical contracts* traded on a *trading venue* it operates:

(a) identify the *related contracts*; and

(b) notify the *FCA* promptly of the details of the contracts in paragraph (a).

10.3.3D G For the purposes of discharging its obligations under *MAR* 10.3.3BR(2), a *trading venue operator* should consider factors such as:

(1) the relationship or dependence between the pricing of the *spot month contract* and the pricing of the *other months' contract*;

(2) the volatility of price of the *commodity derivative*;

(3) the historical pattern of large and concentrated positions in *other months' contracts*; and

(4) the frequency and size of breaches of position limits and position management interventions.

10.3.3E R A *trading venue operator*, when setting *accountability thresholds*, must establish a methodology that has regard at least to:

(1) the level of the position limit and the factors determining the position limit;

(2) the need to ensure increasing positions can be investigated before risks crystallise;

(3) whether the volume and any required remedial action of *accountability threshold* excesses indicates that the control is effective in providing early warning of prospective position limit breaches and enabling action; and

(4) market concentration and concentrated trading activity.

10.3.3F R A *trading venue operator*, when setting *accountability thresholds*, may exclude positions, to which an exemption in *MAR* 10.2 applies, where an *exemption ceiling* is in place.

Risk assessment framework

10.3.3G R (1) A *trading venue operator* must develop a risk assessment framework to enable it to discharge its obligations under *MAR* 10.3.3AR and to determine the need for *additional reporting*.

(2) The risk assessment framework must have regard at least to:

(a) exemptions determined in accordance with *MAR* 10.2, including any conditions attaching to exemptions in the form of *exemption ceilings* or otherwise;

(b) *accountability thresholds*;

(c) whether a *person* otherwise holds a concentrated position in the physical or *commodity derivatives* markets which presents a material risk to the functioning of a *commodity derivatives* market, including the risk of *market abuse* and to orderly pricing and settlement conditions;

(d) the price and liquidity of and other relationships between:

(i) *critical contracts*; and

(ii) *related OTC contracts* or *related overseas commodity derivative contracts*; and

(e) the relevance of (d) to the position management of *critical contracts* traded on a *trading venue* it operates.

Additional reporting

10.3.3H R (1) A *trading venue operator* must have the power to require *additional reporting* to it by a member or participant (A) acting on its behalf or on behalf of a client (B) to enable it to discharge its obligation under (2).

(2) A *trading venue operator* must obtain additional information from A or B as it determines necessary to ensure the proper monitoring of risks to its markets and to protect orderly pricing and settlement conditions in relation to the *critical contracts* or *related contracts* traded on its systems.

(3) In discharging its obligations under (2), a *trading venue operator* must consider whether to require *additional reporting* in relation to OTC positions.

(4) For the purposes of (3), a *trading venue operator* may consider the size of the relevant OTC derivatives market, the potential impact that market may have on the orderly functioning of the relevant market for the *critical contract* traded on its systems and the position management controls it operates.

(5) A *trading venue operator* must notify the *FCA* promptly when and how it decides to exercise its power to require *additional reporting*.

10.3.3I R (1) A *trading venue operator* may require that additional information relating to the price or delivery of a *critical contract* or *related contract* form part of *additional reporting* when *MAR* 10.3.3HR applies, including at least *related OTC contracts* positions, and also where relevant:

(a) *related overseas commodity derivative contracts* positions;

(b) trades in the underlying *commodity* of the *critical contract*;

(c) trades used to settle *commodity futures*, including prices published by price reporting agencies; and

(d) inventories, storage and infrastructure integrity at locations where deliveries are made.

(2) A *trading venue operator* may seek information about inventory, storage and infrastructure integrity from other data sources in addition

to the position holder subject to *additional reporting* imposed further to *MAR* 10.3.3HR.

(3) A *trading venue operator* must inform its members, participants or clients of *related OTC contracts* and, where relevant, *related overseas commodity derivative contracts* to which *additional reporting* applies and the form and frequency of that reporting.

10.3.3J G A *UK RIE* should have regard to *REC* 2.4.3G(12) when discharging its obligations relating to *additional reporting*.

Market risk analysis

10.3.3K R (1) A *trading venue operator* must use the information referred to in *MAR* 10.3 and the reported information in *MAR* 10.4 to perform market risk analysis.

(2) The market risk analysis must include at least:

(a) an identification of risks arising from the underlying physical *commodity*, *related OTC contracts* and *related overseas commodity derivative contracts* markets in relation to their impact on *critical contracts* and *related contracts* traded on a *trading venue* it operates; and

(b) how those risks are being managed by the *trading venue operator*.

(3) A *trading venue operator* must:

(a) make available its market risk analysis to the *FCA* on a regular basis and, upon request, data underlying the analysis; and

(b) store information in an easily retrievable way that is accessible for future reference by the *FCA* for the purposes of (3)(a).

(4) A *trading venue operator* must make available its market risk analysis to the *FCA*:

(a) whenever there is a significant change in market risk, having regard to size or concentration of positions, settlement or delivery and underlying *commodity* markets; and

(b) at least on an annual basis.

Supervision of position management controls

10.3.4 G (1) ~~An operator of a *trading venue* referred to in *MAR* 10.3.1G~~ A *trading venue operator* may include provisions in its rulebook which impose appropriate obligations on its members or participants as part of compliance with its position management controls obligations, including in relation to *accountability thresholds* and *additional reporting*.

(2) A *trading venue operator* should require, via its rulebook or otherwise, further reporting by a member or participant acting on its behalf or on behalf of a client, as well as in the circumstances to which *additional reporting* applies. This includes imposing a responsibility on members to put arrangements in place with clients, enabling ready access to data at the level of the client.

10.3.4A R When *additional reporting* applies, a *trading venue operator* may consider the following factors as part of its monitoring and oversight:

(1) historic and anticipated position sizes and risk management capabilities of the individual markets or participants;

(2) the extent and quality of the individual member or participant's engagement with the *trading venue operator* and response to its inquiries;

(3) where a contract is physically deliverable, the complexity of the delivery process and a position holder's expertise in taking delivery of the underlying *commodity*; and

(4) how an individual member or participant's positions compare with other position holders.

10.3.4B R A *trading venue operator* must notify the *FCA* prior to implementation of each of the following and their subsequent modification:

(1) the risk assessment framework, *additional reporting* and market risk analysis;

(2) *accountability thresholds*;

(3) governance arrangements to be followed for adoption and continuing review of position limit setting, the risk assessment framework, *accountability thresholds* and market risk analysis, including allocation of senior management responsibility, policies for managing conflicts, systems and controls, and board oversight;

(4) the methodology for and setting of position limits and *accountability thresholds*, including the identification of *related contracts* and positions not eligible for netting;

(5) the list of *related contracts*, *related OTC contracts* and, where relevant, *related overseas commodity derivative contracts*;

(6) policies and procedures relating to:

(a) the granting of exemptions in *MAR* 10.2, including the approach to the setting of *exemption ceilings*; and

(b) position limit breaches, including resolution and access to enforcement tools; and

(7) arrangements for the sharing of information with relevant *CCPs*.

10.3.4C G When a *trading venue operator* notifies the *FCA* in accordance with *MAR* 10.3.4BR, it should allow such time as is necessary for the *FCA* to consider and assess the relevant matters, prior to proposed implementation.

~~Position management controls: Procedure for informing the FCA~~

10.3.5 G ~~A *firm* must comply with the obligation in *MAR* 10.3.3R(4) by completing the form available at www.fca.org.uk.~~ [deleted]

10.3.6 G A *trading venue operator* should have regard, as applicable, to:

(1) *recognition requirements* including systems and controls, internal audit, ensuring orderly markets and promotion, and maintenance of standards; or

(2) *common platform requirements*,

when developing *accountability thresholds* and applying *additional reporting*, as well as when granting exemptions in accordance with *MAR* 2.

10.3.7 G (1) A *trading venue operator* should establish notification and information sharing arrangements with *CCPs* clearing transactions executed on the *trading venues* it operates, in particular when it identifies potential concerns that relate to *CCP* regulatory functions, as part of the application for exemption process or as a result of *additional reporting*.

(2) When requiring information from position holders for the purpose of position management controls or sharing such information with *CCPs*, the *trading venue operator* should do so only for the purpose of discharging its regulatory functions and responsibilities.

10.3.8 R A *trading venue operator* (A) must exercise reasonable endeavours to identify and determine:

(1) any *related OTC derivative*; or

(2) any *commodity derivative* traded on an overseas trading venue:

(a) which provides a comparable economic exposure to a *critical contract* or *related contract* traded on a *trading venue* A operates, including where its underlying has the same *commodity* for delivery at a location specified in the *critical contract*; or

(b) the settlement price of which is linked to or capable of materially influencing the settlement price of a *critical contract* or *related contract* traded on a *trading venue* A operates.

10.4 Position reporting

Application

10.4.1 G The application of this section is set out in the following table:

Type of firm	Applicable provisions
Regulated market	*MAR* 10.4.2G *MAR* 10.4.1AR to *MAR* 10.4.1DR and *MAR* 10.4.3AR
UK firm operating a multilateral trading facility or an *OTF* and a *UK branch* of a *third country investment firm operating a multilateral trading facility* or an *OTF*	*MAR* 10.4.1AR to *MAR* 10.4.1DR and *MAR* 10.4.3R to *MAR* 10.4.6G
MiFID investment firm	*MAR* 10.4.7D to *MAR* 10.4.9D *MAR* 10.4.8D and *MAR* 10.4.11G
…	

Position reporting by trading venue operators

10.4.1A R A *trading venue operator* must send the *FCA* a *weekly report* regarding the aggregate positions held at the close of business of each week, no later than 5.30pm on Wednesday of the following week.

10.4.1B R A *trading venue operator* must submit a *weekly report* to the *FCA* as soon as possible and no later than 5.30pm on Thursday of that week, where any of Monday, Tuesday or Wednesday of the week in which that report is to be submitted is not a *working day*.

10.4.1C R (1) A *trading venue operator* must prepare a *weekly report* separately for each *commodity derivative* and *emission allowance* traded on its

trading venue in accordance with the formats set out in the tables in *MAR* 10 Annex 3R.

(2) A *weekly report* must contain:

(a) The aggregate of all positions held by the different *persons* in each of the categories set out in *MAR* 10 Annex 3R in an individual *commodity derivative* or *emission allowance* traded on that *trading venue*; and

(b) all positions across all maturities of all contracts.

(3) A *trading venue operator* must submit to the *FCA* a *weekly report* in a common standard XML format.

10.4.1D R A *trading venue operator* must submit to the *FCA* a breakdown of the positions referred to in *MAR* 10.4.8D by means of a daily position report in:

(1) common standard XML format; and

(2) the format set out in the tables in *MAR* 10 Annex 4R.

Position reporting by UK regulated markets

10.4.2 G …

[**Note:** article 58(1) of *MiFID*]

Position reporting by UK firms and UK branches of third country investment firms operating an MTF or OTF: Reports

10.4.3 R …

(2) A *firm* must make public and provide to the *FCA* a weekly report with the aggregate positions held by the different categories of *persons* for the different *commodity derivatives* or *emission allowances* traded on the *trading venue*, where those instruments meet the criteria of article 83 of the *MiFID Org Regulation* *MAR* 10.4.3AR, specifying:

…

…

(4) For the weekly report mentioned in (2) above, the *firm* must differentiate between:

(a) positions which in an objectively measurable way reduce risks directly relating to commercial activities are subject to the exemptions in *MAR* 10.2, identifying the relevant exemption by reference to the *non-financial entity*, pass-through hedging or liquidity provider exemption, as applicable; and

(b) other positions.

~~[**Note:** article 58(1) of *MiFID*, *MiFID ITS 4*, on position reporting and *MiFID ITS 5* on the format and timing of weekly position reports]~~

10.4.3A R (1) For the purpose of *weekly reports*, the obligation for a *trading venue operator* to make public such a report applies when both of the following 2 thresholds are met:

(a) 20 open position holders exist in a given contract on a given *trading venue*; and

(b) the absolute amount of the gross long or short volume of total *open interest*, expressed in the number of lots of the relevant *commodity derivative*, exceeds a level of 4 times the deliverable supply in the same *commodity derivative*, expressed in number of lots.

(2) Where the *commodity derivative* does not have a physically deliverable underlying asset and for *emission allowances*, (1)(b) does not apply.

(3) The threshold set out in (1)(a) applies in aggregate on the basis of all of the categories of *persons* regardless of the numbers of position holders in any single category of *persons*.

(4) For contracts where there are fewer than 5 position holders active in a given category of *persons*, the number of position holders in that category need not be published.

(5) For contracts that meet the conditions set out (1) for the first time, *trading venues* must publish the contracts' first *weekly report* as soon as it is feasibly practical, and in any event no later than 3 weeks from the date on which the thresholds are first triggered.

(6) Where the conditions set out in (1) are no longer met, *trading venues* must continue to publish the *weekly reports* for a period of 3 *months*. The obligation to publish the *weekly report* no longer applies where the conditions set out in (1) have not been met continuously upon expiry of that period.

Position reporting by UK firms and UK branches of third country investment firms operating an MTF or OTF: classification of persons holding positions in commodity derivatives or emission allowances

10.4.4 R …

~~[**Note:** article 58(4) of *MiFID*]~~

Position reporting by UK firms and UK branches of ~~a~~ third country investment firms operating an MTF or OTF: Procedure for reporting to the FCA

10.4.5 D …

(2) A *firm* shall report to the *FCA*:

(a) (where it meets the minimum threshold as specified in ~~article 83 of the *MiFID Org Regulation*~~ *MAR* 10.4.3AR) the ~~weekly report~~ *weekly report* ~~referred to in *MAR* 10.4.3R(2)~~, ~~by using~~ in the form set out in ~~Annex I of *MiFID ITS 4*~~ *MAR* 10 Annex 3R, and publish it on its website; and

(b) in respect of the daily report referred to in *MAR* 10.4.3R(3):

(i) ~~by using~~ in the form set out in ~~Annex II of *MiFID ITS 4* available at https://www.fca.org.uk/markets/mifid-ii/commodity-derivatives~~ *MAR* 10 Annex 4R; and

(ii) in each case, the report must be provided to the *FCA* by ~~21:00 GMT~~ 9pm the following *business day*.

~~[**Note:** *MiFID ITS 4* on position reporting]~~

Position reporting by UK firms and UK branches of ~~a~~ third country investment firms operating an MTF or OTF~~: Duplication of reporting~~

10.4.6 G For the purposes of making the ~~weekly report~~ *weekly report* referred to under *MAR* 10.4.3R(2), the *FCA* will accept an email containing a link to the report, as published on the *firm's* website. Emails should be sent to the *FCA* at `COT_reports@fca.org`.uk.

Position reporting by members, participants or clients of UK trading venues: trading venue participant reporting

10.4.7 D …

~~[**Note:** article 58(3) of *MiFID*]~~

MiFID investment firms and UK branches of third country investment firms: ~~OTC~~ reporting to the FCA

10.4.8 D …

(2) An *investment firm* in (1) trading in a *commodity derivative* or *emission allowance* outside a *trading venue* must, where the *FCA* is the *competent authority* of the *trading venue* where that *commodity derivative* or *emission allowance* is traded, provide the *FCA* with a report containing a complete breakdown of:

(a) their positions taken in those *commodity derivatives* or *emission allowances* traded on a *trading venue*; and

(b) ~~*economically equivalent OTC contracts*; and~~ [deleted]

(c) the positions of their *clients* and the clients of those clients until the end client is reached, in accordance with article 26 of *MiFIR*.

(3) The report in (2) must be submitted to the *FCA*, for each *business day*, by ~~21:00 GMT~~ 9pm the following *business day*, ~~using~~ in the form set out in ~~Annex II of *MiFID ITS 4* available at https://www.fca.org.uk/markets/mifid-ii/commodity-derivatives~~ *MAR* 10 Annex 4R.

(4) ~~The obligation in (2) does not apply where there is a *central competent authority* for the *commodity derivative* other than the *FCA*.~~ [deleted]

~~[**Note:** 58(2) of *MiFID*, and *MiFID ITS 4* on position reporting]~~

EEA MiFID investment firms who are members, participants or clients of UK trading venues: trading venue participant report and OTC reporting to the FCA

10.4.11 G …

(2) A *firm* subject to *MAR* 10.4.8D(2) may use a third party technology provider to submit to the *FCA* the report referred to in *MAR* 10.4.8D(2) provided that it does so in a manner consistent with *MiFID*. It will retain responsibility for the completeness, accuracy and timely submission of the report and should populate field 5 of ~~*MiFID ITS 4* Annex II~~ *MAR* 10 Annex 4R Table 2 with its own reporting entity identification. It should be the applicant for, and should complete and sign, the *FCA MDP on-boarding application form*.

…

(4) A *firm* subject to *MAR* 10.4.8D(2) may arrange for the *trading venue* where that *commodity derivative* or *emission allowance* is traded to provide the *FCA* with the report provided that it does so in a manner consistent with *MiFID*. The *firm* will retain responsibility for the completeness, accuracy and timely submission of the report, submitted on its behalf. The *firm* should populate field 5 of ~~*MiFID ITS 4* Annex II~~ *MAR* 10 Annex 4R Table 2 with its own reporting entity identification.

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:

…

(2) require ~~an operator of~~ a *trading venue* <u>*operator*</u> to provide information including all relevant documentation on, or concerning~~,~~<u>:</u>

<u>(a)</u> trades a *person* has undertaken, or intends to undertake in a contract to which a position limit relates~~.~~; <u>and</u>

<u>(b)</u> <u>trades a *person* has undertaken, or intends to undertake in a contract or within a class of *commodity derivatives* to which position management requirements relate.</u>

~~[**Note:** article 69(2)(j) of *MiFID*]~~

<u>10.5.1A</u> <u>G</u> <u>The *FCA* may consider exercising the power in Regulation 27 of the *MiFI Regulations* to require a *trading venue operator* or other *person* to collect or provide data on *related OTC contracts*.</u>

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 <u>for the purpose of advancing one or more of its *operational objectives*</u>, limit the ability of any *person* to enter into a contract for a ~~*commodity derivative*~~ <u>commodity derivative</u>, 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 <u>the *trading venue* or</u> the *FCA* ~~in accordance with article 57 of *MiFID* to which the contract relate~~s <u>(under regulation 16 of the *MiFI Regulations*)</u>; and

…

~~[**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*:

…

~~[**Note:** article 69(2)(j) of *MiFID*]~~

…

~~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.~~ [deleted]

…

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*~~.

…

MAR 10 Annex 1 (Application form for a non-financial entity for an exemption from compliance with position limits) is deleted in its entirety. The deleted text is not shown but the annex is marked [deleted] as shown below.

10 Annex 1D ~~**Application form for a non-financial entity for an exemption from compliance with position limits**~~ **[deleted]**

Insert the following new annexes, MAR 10 Annex 2R, MAR 10 Annex 3R and MAR 10 Annex 4R, after MAR 10 Annex 1D. The text is all new and is not underlined.

10 Annex 2R **List of critical contracts and related contracts subject to Position Limits**

Contract name
LME Aluminium
LME Copper
LME Lead
LME Nickel
LME Tin
LME Zinc
IFEU London Cocoa Futures
IFEU Robusta Coffee Futures
IFEU White Sugar Futures
IFEU UK Feed Wheat Futures

IFEU Low Sulphur Gasoil Futures
IFEU UK Natural Gas Futures
IFEU Brent Crude Futures
IFEU T-West Texas Intermediate Light Sweet Crude Futures

10 Annex 3R **Format for the weekly reports**

[*Editor's note*: The 3 tables previously located at Annex I of the following technical standard are to be moved to this annex:

Commission Implementing Regulation (EU) 2017/1093 of 20 June 2017 laying down implementing technical standards with regard to the format of position reports by investment firms and market operators.

Where amendments are to be made to the content of the tables, underlining indicates new text.]

Table 1 Weekly Reports

Notation of the position quantity	Investment Firms or credit institutions		Investment Funds		Other Financial Institutions		Commercial Undertakings		Operators with compliance obligations under Directive 2003/87/EC or the trading scheme order 2020	
	Long	Short	Long	Short	Long	Short	Long	Short	Long	Short
…										

…

10 Annex 4R **Format for the daily reports**

[*Editor's note*: The 2 tables previously located at Annex II of the following technical standard are to be moved to this annex:

Commission Implementing Regulation (EU) 2017/1093 of 20 June 2017 laying down implementing technical standards with regard to the format of position reports by investment firms and market operators.

Where amendments are to be made to the content of the tables, underlining indicates new text and striking through indicates deleted text.]

…

Table 2 Tables of fields to be reported for all positions across all maturities of all contracts for the purposes of ~~Article 2~~ MAR 10.4.1DR

FIELD	DETAILS TO BE REPORTED	FORMAT FOR REPORTING
…		
Trading venue identifier	Field to be populated with the ISO 10383 segment MIC for positions reported in respect of on-venue contracts. Where the segment MIC does not exist, use the operating MIC. Use MIC code "XXXX" for off-venue positions in economically equivalent OTC contracts or related OTC contracts. Use MIC code "XOFF" for listed derivatives or emission allowances traded off-exchange.	{MIC}
Position type	Field to report whether the position is in either futures, options, emission allowances or derivatives thereof, commodity derivatives defined under ~~point (c) of Article 4(1)(44) of Directive 2014/65/EU of the European Parliament and of the Council or any other contract type~~ article 2(1)(24)(c) of MiFIR.	
…		

Indicator of whether the position is risk reducing in relation to commercial activity	Field to report whether the position is risk reducing in accordance with ~~Article 7 of Delegated Regulation (EU) 2017/591~~ the hedging exemption in *MAR* 10.2.	
Indicator of whether the position is a pass-through of a hedging exemption	Field to report whether the position is a pass-through of a position that is risk-reducing in accordance with *MAR* 10.2.	
Indicator of whether the position is entered into as part of an obligation to provide liquidity	Field to report whether the position is part of an obligation to provide liquidity in accordance with *MAR* 10.2.	

Amend the following as shown.

Sch 2 Notification requirements

…

Sch 2.2 G Notification requirements

Handbook Reference	Matter to be notified	Contents of Notification	Trigger event	Time allowed
…				
MAR 9.3.10R(2)	…	…	…	…
MAR 10.2.1CR	Other contracts which offer a comparable economic exposure to that provided by a *critical contract* and may be used to circumvent the purpose of *MAR* 10.2.1AR.	Details of the contract	Where a *trading venue operator* identifies a contract to which *MAR* 10.2.1CR(1) applies.	Promptly
MAR 10.2.1ER	When a contract may amount to a *critical contract*	Details of the contract	When a *trading venue operator* considers that a contract may amount to a *critical contract*	Promptly

			and requires closer monitoring by it or the *FCA* for this purpose	
MAR 10.2.1MR	Position limit relating to *commodity derivative*	Position limit details relating to *spot month contracts* and *other months' contracts*	Occurrence	Without delay and prior to imposing a position limit unless it is not reasonably practicable to do so
MAR 10.2.11R	Position limit exemption granted to a *non-financial entity*	Details including any conditions such as an *exemption ceiling* attached to the exemption	Occurrence	Promptly and on an annual basis a list of all exemptions etc. granted to *non-financial entities*
MAR 10.2.20R	Position limit exemption to a *financial entity*	Details including any conditions such as an *exemption ceiling* attached to the exemption	Occurrence	Promptly and on an annual basis a list of all exemptions etc. granted to *financial entities*
MAR 10.2.25R	Position limit exemption granted to a liquidity provider	Details including any conditions such as an *exemption ceiling* attached to	Occurrence	Promptly and on an annual basis a list of all exemptions etc. granted to liquidity providers

		the exemption		
MAR 10.3.3CR	*Accountability thresholds* review	Report details	Whenever there is a significant change to either the position limit or one or more of the factors in *MAR* 10.3.3ER; and at least on an annual basis	Promptly
MAR 10.3.3CR	*Related contracts*	Details of the contract	Occurrence	Promptly
MAR 10.3.4BR	Miscellaneous comprising: • risk assessment framework including policies and procedures related to *accountability threshold* breaches, market risk analysis and *additional reporting* arrangements; • *additional reporting* and other reporting arising from market risk analysis; • *accountability thresholds*; • governance arrangements including for setting position limits and *accountability thresholds*, identification of relevant contracts and netting arrangements;	Details	Implementation and modification	Prior to implementation and modification allowing such time as is necessary for the *FCA* to consider and assess the relevant matters, prior to proposed implementation

	• methodologies; • list of *related contracts*, *related OTC contracts* and where relevant *related overseas commodity derivative contracts*; • policies and procedures relating to granting of position limit exemptions including *exemption ceilings* and position limit breaches; and • information sharing with *CCPs*.			

Part 4: Comes into force on 3 March 2025

Insert the following new chapter, MAR TP 3, after MAR TP 2 (Transitional provisions relating to trading venue operators and transparency investment firms). The text is all new and is not underlined.

TP 3 Transitional provisions relating to trading venue operators

	Application		
1.1	R	The *rules* in *MAR* TP 3 applies in respect of *trading venue operators* from 3 March 2025 to 5 July 2026.	
	Position management controls		
1.2	R	A *trading venue operator* must notify the *FCA* prior to implementation of each of the following:	
		(1)	the risk assessment framework, *additional reporting* and market risk analysis;
		(2)	*accountability thresholds*;
		(3)	governance arrangements to be followed for adoption and continuing review of position limit setting, the risk assessment framework, *accountability thresholds* and market risk analysis, including allocation

			of senior management responsibility, policies for managing conflicts, systems and controls, and board oversight;	
		(4)	the methodology for and setting of position limits and *accountability thresholds*, including the identification of *related contracts*, *related OTC contracts* and positions not eligible for netting;	
		(5)	policies and procedures relating to:	
			(a)	the granting of position limit exemptions for the position limits it sets, including the approach to the setting of *exemption ceilings*; and
			(b)	position limit breaches including resolution and access to enforcement tools; and
		(6)	arrangements for the sharing of information with relevant *CCPs*.	
1.3	G	When a *trading venue operator* notifies the *FCA* in accordance with *MAR* TP 3.1.2R, it should allow such time as is necessary for the *FCA* to consider and assess the relevant matters, prior to proposed implementation.		
	Additional reporting			
1.4	R	A *trading venue operator* must notify the *FCA* promptly when it decides to require additional reporting to that required by *MAR* 10.4, including in respect of OTC positions, to ensure the proper monitoring of risks to its markets and to protect orderly pricing and settlement conditions in relation to the *commodity derivatives* traded on its systems.		

Annex C

Amendments to the Decision Procedure and Penalties manual (DEPP)

In this Annex, underlining indicates new text and striking through indicates deleted text.

2 Statutory notices and the allocation of decision making

…

2 Annex 2 Supervisory notices

…

Markets in Financial Instruments Regulations 2017	Description	Handbook reference	Decision maker
…			
Regulation 28(4)	when the *FCA* is imposing a limitation, restriction or requirement under regulation ~~24~~ <u>28(4)</u>		*Executive procedures* (see *DEPP* 2.5.18G)
…			

…

Annex D

Amendments to the Recognised Investment Exchanges sourcebook (REC)

In this Annex, underlining indicates new text and striking through indicates deleted text.

2 Recognition requirements

2.1 Introduction

…

2.1.4 G Location of recognition requirements and guidance

Recognition Requirements Regulations	Subject	Section in REC 2/other parts of the *Handbook*
…		
Paragraphs 7BA & 7BB	Position ~~management and position~~ reporting re commodity derivatives	2.7A
…		

…

2.7A Position ~~management and position~~ reporting in relation to commodity derivatives

2.7A.1 UK

Paragraph 7BA ~~– Position management~~ <u>[deleted]</u>		
~~(1)~~	~~A [*UK RIE*] operating a trading venue which trades commodity derivatives must apply position management controls on that venue, which must at least enable the [*UK RIE*] to -~~	
	~~(a)~~	~~monitor the open interest positions of persons;~~
	~~(b)~~	~~access information, including all relevant documentation, from persons about~~

		~~(i)~~	~~the size and purpose of a position or exposure entered into;~~
		~~(ii)~~	~~any beneficial or underlying owners;~~
		~~(iii)~~	~~any concert arrangements; and~~
		~~(iv)~~	~~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.~~	
~~(2)~~	~~The position management controls must take account of the nature and composition of market participants and of the use they make of the contracts submitted to trading and must –~~		
	~~(a)~~	~~be transparent;~~	
	~~(b)~~	~~be non-discriminatory; and~~	
	~~(c)~~	~~specify how they apply to persons.~~	
~~(3)~~	~~A [*UK RIE*] must inform the FCA of the details of the position management controls in relation to each trading venue it operates.~~		
…			

…

Annex E

Amendments to the Enforcement Guide (EG)

In this Annex, striking through indicates deleted text.

19 Non-FSMA powers

…

19.34 Markets in Financial Instruments Regulations 2017

19.34.1 G The *MiFI Regulations* in part implemented *MiFID*. The *FCA* has investigative and enforcement powers in relation to both criminal and non-criminal breaches of the *MiFI Regulations* (including requirements imposed on persons subject to the *MiFI Regulations* by *MiFIR* and any *onshored regulation* which was an *EU regulation* made under *MiFIR* or *MiFID*). The *MiFI Regulations* impose requirements on:

(1) *persons* holding positions in relevant contracts for commodity derivatives trading on *trading venues* ~~and for *economically equivalent OTC contracts*~~, whether or not the *persons* are authorised; and

…

…

Annex F

Amendments to the Perimeter Guidance manual (PERG)

In this Annex, underlining indicates new text and striking through indicates deleted text.

2 Authorisation and regulated activities

…

2.9 Regulated activities: exclusions applicable in certain circumstances

…

Persons seeking to use the exemption under Article 2.1(j) of the Markets in Financial Instruments Directive

2.9.30 G …

…

~~In each case, a *person* seeking to rely on the article 2(1)(j) exemption must provide notice to the *FCA* in accordance with regulation 47 of the *MiFI Regulations*~~.

…

13 Guidance on the scope of the UK provisions which implemented MiFID

…

13.5 Exemptions from MiFID

…

Exemption for commodity derivatives business

…

Q44A. How do I know whether my main business is investment, banking or commodities?

When considering what is a group's 'main business' for the purpose of the requirement described in the answer to Q44 that your main business should not be investment services, banking services or commodity derivatives market making, in our view various factors are likely to be relevant including turnover, profit, capital employed, numbers of employees and time spent by employees. These factors should then be considered in the round in deciding whether any one operation or business line amounts to your group's main business.

The determination of your main business as described in this answer is not directly related to the test for deciding whether your commodities business is ancillary to your main business (the ancillary test is referred to in the answer to

Q45). This is because the ancillary test compares the size of your ~~commodities~~ commodity derivatives and emission allowance business (see guidance in *PERG* 13Q32 to 33C and 34A) with the rest of your business but does not specify how to identify what your main business is within your non-commodities business.

Q44B. Are there any formalities for using the commodities exemption?

It is a condition of the commodities exemption described in the answer to Q44 that you~~:~~

- ~~should notify annually the relevant competent authority that you make use of this exemption; and~~
- upon request, report to the competent authority the basis on which you consider that the requirement for the commodities business to be ancillary is met.

~~If you are a UK firm, the~~ The FCA is the relevant competent authority for these purposes.

If you carry out some occasional commodity derivatives activities you may not need to rely on this exemption. See the answer to Q7 (We provide investment services to our clients. How do we know whether we are an investment firm for the purposes of article 4.1(1) MiFID?) for more on this.

…

TECHNICAL STANDARDS (COMMODITY DERIVATIVES) (POSITION LIMITS, MANAGEMENT AND REPORTING) INSTRUMENT 2025

Powers exercised

A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of the powers and related provisions in or under:

(1) article 26(9) (Obligation to report transactions) of, and paragraphs 31, 32 and 33 of Schedule 3 to, Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012; and

(2) the following sections of the Financial Services and Markets Act 2000 (“the Act”):

(a) section 138P (Technical standards);
(b) section 138Q (Standards instruments);
(c) section 138S (Application of Chapters 1 and 2); and
(d) section 137T (General supplementary powers).

B. The provisions listed above are specified for the purposes of section 138Q(2) (Standards instruments) of the Act.

Pre-conditions to making

C. The FCA has consulted the Prudential Regulation Authority and the Bank of England as appropriate in accordance with section 138P of the Act.

D. A draft of this instrument has been approved by the Treasury in accordance with section 138R of the Act.

Interpretation

E. In this instrument, any reference to any provision of assimilated direct EU legislation is a reference to it as it forms part of assimilated law.

Modifications

F. The FCA revokes the following technical standards:

Commission Delegated Regulation (EU) No 2017/591 of 1 December 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the application of position limits to commodity derivatives

Commission Implementing Regulation (EU) No 2017/953 of 6 June 2017 laying down implementing technical standards with regard to the format and the timing of position reports by investment firms and market operators of trading venues
Commission Implementing Regulation (EU) No 2017/1093 of 20 June laying down implementing technical standards with regard to the format of position reports by investment firms and market operators

G. The FCA amends the following technical standard in accordance with the Annex to this instrument:

Commission Delegated Regulation (EU) 2017/590 of 28 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the reporting of transactions to competent authorities

Commencement

H. This instrument comes into force on 6 July 2026.

Citation

I. This instrument may be cited as the Technical Standards (Commodity Derivatives) (Position Limits, Management and Reporting) Instrument 2025.

By order of the Board
30 January 2025

In this Annex, underlining indicates new text and striking through indicates deleted text.

Annex

Commission Delegated Regulation (EU) 2017/590 of 28 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the reporting of transactions to competent authorities

…

ANNEX I

…

Table 2 **Details to be reported in transaction reports**

N	FIELD	CONTENT TO BE REPORTED	FORMAT AND STANDARDS TO BE USED FOR REPORTING
…			
Trader, algorithms, waivers and indicators			
…			
64	Commodity derivative indicator	Indication as to whether the transaction reduces risk in an objectively measurable way in accordance with ~~regulation 17 of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017~~ the non-financial entity exemption in MAR 10.2. Where the transaction is for a transmitted order that has met the conditions for transmission set out in Article 4, this field shall be populated by the receiving firm in the receiving firm's reports using the information received from the transmitting firm. This field is only applicable for commodity derivative transactions.	"true" - yes "false" - no
…			

MARKETS IN FINANCIAL INSTRUMENTS (NON-EQUITY TRANSPARENCY RULES) (AMENDMENT) INSTRUMENT 2025

Powers exercised

A. The Financial Conduct Authority ("the FCA") makes this instrument in the exercise of the powers and related provisions in or under:

(1) articles 8, 9, 10, 11 and 21 of Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012;

(2) the following sections of the Financial Services and Markets Act 2000 ("the Act"):

(a) section 137A (The FCA's general rules);
(b) section 137T (General supplementary powers);
(c) section 139A (Power of the FCA to give guidance); and
(d) section 300H (Rules relating to investment exchanges and data reporting service providers);

(3) regulation 11 of the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges, Clearing Houses and Central Securities Depositories) Regulations 2001 (SI 2001/995); and

(4) the other rule and guidance making powers listed in Schedule 4 (Powers exercised) to the General Provisions of the FCA's Handbook.

B. The rule-making powers listed above are specified for the purposes of section 138G(2) (Rule-making instruments) of the Act.

Commencement

C. Parts 1 and 3 of this instrument come into force on 5 February 2025.

D. Parts 2 and 4 of this instrument come into force on 1 December 2025 immediately after the relevant parts of the Markets in Financial Instruments (Non-Equity Transparency Rules) Instrument 2024 (FCA 2024/38) come into force.

Interpretation

E. In this instrument, any reference to any provision of assimilated direct legislation is a reference to it as it forms part of assimilated law.

Amendments to the Handbook

F. The Market Conduct sourcebook (MAR) is amended in accordance with the Annex to this instrument.

Notes

G. In the Annex to this instrument, the notes (indicated by "*Editor's note:*") are included for the convenience of readers, but do not form part of the legislative text.

Citation

H. This instrument may be cited as the Markets in Financial Instruments (Non-Equity Transparency Rules) (Amendment) Instrument 2025.

By order of the Board
30 January 2025

Annex

Amendments to the Market Conduct sourcebook (MAR)

In this Annex, underlining indicates new text and striking through indicates deleted text.

Part 1: Comes into force on 5 February 2025

9A Trade data

…

9A.2 Trade data requirements

Making trade data available on a reasonable commercial basis

9A.2.1 R (1) A *trading venue operator* must make the information published in accordance with articles 3, 4 and 6 to 11 of ~~*UK*~~ *MiFIR* available to the public on a reasonable commercial basis and ensure non-discriminatory access to the information.

…

9A.2.2 R (1) A *systematic internaliser* must ensure that the quotes published in accordance with article 15(1) of ~~*UK*~~ *MiFIR* are accessible to other market participants on a reasonable commercial basis.

(2) A *systematic internaliser* must ensure that the quotes published in accordance with article 18 of ~~*UK*~~ *MiFIR* are made public in a manner which is easily accessible to other market participants on a reasonable commercial basis.

(3) Paragraph (2) does not apply to a ~~*trading venue operator*~~ <u>*systematic internaliser*</u> when making market data available to the public free of charge.

…

Part 2: Comes into force on 1 December 2025

11 Transparency rules for transparency instruments

…

11.3 Waivers from pre-trade transparency requirements

…

Size waivers for category 1 instruments

11.3.2 R *MAR* 11.2.2R does not apply to orders relating to a *category 1 instrument* which is larger than the size specified in the column ~~G~~ E in the row corresponding to the particular instrument in *MAR* 11 Annex 1R.

…

11 Annex 1 **Category 1 instruments**

R …

Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H	Column I	Column J
Grouping				**LiS Threshold 1**	**Deferral 1**	**LiS Threshold 2**	**Deferral 2**	**LiS Threshold 3**	**Deferral 3**
Asset classes	**Factor 1**	**Factor 2**	**Factor 3**						
…									
Bond Type	**Currency**	~~**Issuer**~~ **Rating**	**Issue Size**	…					
…									

…

[*Editor's note*: This annex will consist of the table previously located at Annex II of the UK version of Commission Delegated Regulation (EU) 2017/583 of 14 July 2016 supplementing MiFIR with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of bonds, structured finance products, emission allowances and derivatives, which is part of UK law by virtue of the European Union (Withdrawal) Act 2018. Where amendments are to be made to the content of the tables, underlining indicates new text and striking through indicates deleted text.]

11 Annex 2R **Details of transactions to be made available to the public**

…

Table 2: List of details for the purpose of post-trade transparency				
Details	**Financial instruments**	**Description/ Details to be published**	**Type of execution/ publication venue**	**Format to be populated as defined in Table 1**
…	…	…	…	…
Price	…	… ~~Where price is not currently available but pending, the value should be "PNDG".~~ …	…	…
Price conditions	…	…	…	~~'PDNG'~~ 'PNDG' when price is currently not available but pending …
…				

…

Part 3: Comes into force on 5 February 2025

TP 2 Transitional provisions relating to trading venue operators and transparency investment firms

TP 2.1

	Application			
1.1	R	(1)	The *rules* in *MAR* TP 2 apply in respect of:	
			(a)	*trading venue operators*; ~~and~~
			(b)	*transparency investment firms*~~.~~; and

		(c)	*APAs*.
1.2	R	A *trading venue operator* is subject to the transparency requirements previously arising under ~~*UK*~~ *MiFIR*, including *MiFID RTS 2*, as it had effect immediately before 1 December 2024 and applied to it, except where *MAR* TP 2.1.4R applies.	
…			
1.4	R	For the period between 31 March 2025 and 30 November 2025, a *trading venue operator* is not subject to a pre-transparency requirement under Title II, Chapter 2 of ~~*UK*~~ *MiFIR* in respect of a *request for quote system* or voice trading system when operated by the *trading venue operator*.	
…			
1.7	R	…	
	Transparency investment firms (except systematic internalisers) and APAs		
1.7A	R	A *transparency investment firm* (except a *systematic internaliser*) and an *APA* are subject to the transparency requirements previously arising under *MiFIR*, including *MiFID RTS 2* and *MiFID RTS 3*, as it had effect immediately before 1 December 2024 and applied to them.	
1.7B	G	*MAR* TP 2 1.7AR provides for continuity of transparency requirements for *transparency investment firms* (except *systematic internalisers*) and *APAs*.	

Part 4: Comes into force on 1 December 2025

	Pre-1 December 2025 transactions	
1.8	G	In respect of a trade concluded before 1 December 2025, the *FCA* will treat anything done by a *transparency firm* for the purposes of complying with *MAR* TP 2 1.2R ~~and~~, *MAR* TP 2 1.5R or *MAR* TP 2 1.7AR as if it were done for the purposes of any equivalent new transparency provision in *MAR* 11 in force after 1 December 2025.
1.9	R	Where a *transparency firm* publishes ~~(via an *APA* or otherwise)~~ a trade report before 1 December 2025 in accordance with *MAR* TP 2 1.2R ~~or~~, *MAR* TP 2 1.5R or *MAR* TP 2 1.7AR and amends the report after 1 December 2025, it may make the new trade report required by *MAR* 11.4.5R(2)(b) either in accordance with *MAR* 11 Annex 2 or in accordance with *MAR* TP 2 1.2R ~~or~~, *MAR* TP 2 1.5R or *MAR* TP 2 1.7AR, as they previously applied.

TECHNICAL STANDARDS (COMMODITY DERIVATIVES) (POSITION LIMITS, MANAGEMENT AND REPORTING) INSTRUMENT 2025

Powers exercised

A. The Financial Conduct Authority ("the FCA") makes this instrument in the exercise of the powers and related provisions in or under:

(1) article 26(9) (Obligation to report transactions) of, and paragraphs 31, 32 and 33 of Schedule 3 to, Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012; and

(2) the following sections of the Financial Services and Markets Act 2000 ("the Act"):

(a) section 138P (Technical standards);
(b) section 138Q (Standards instruments);
(c) section 138S (Application of Chapters 1 and 2); and
(d) section 137T (General supplementary powers).

B. The provisions listed above are specified for the purposes of section 138Q(2) (Standards instruments) of the Act.

Pre-conditions to making

C. The FCA has consulted the Prudential Regulation Authority and the Bank of England as appropriate in accordance with section 138P of the Act.

D. A draft of this instrument has been approved by the Treasury in accordance with section 138R of the Act.

Interpretation

E. In this instrument, any reference to any provision of assimilated direct EU legislation is a reference to it as it forms part of assimilated law.

Modifications

F. The FCA revokes the following technical standards:

Commission Delegated Regulation (EU) No 2017/591 of 1 December 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the application of position limits to commodity derivatives

Commission Implementing Regulation (EU) No 2017/953 of 6 June 2017 laying down implementing technical standards with regard to the format and the timing of position reports by investment firms and market operators of trading venues
Commission Implementing Regulation (EU) No 2017/1093 of 20 June laying down implementing technical standards with regard to the format of position reports by investment firms and market operators

G. The FCA amends the following technical standard in accordance with the Annex to this instrument:

Commission Delegated Regulation (EU) 2017/590 of 28 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the reporting of transactions to competent authorities

Commencement

H. This instrument comes into force on 6 July 2026.

Citation

I. This instrument may be cited as the Technical Standards (Commodity Derivatives) (Position Limits, Management and Reporting) Instrument 2025.

By order of the Board
30 January 2025

In this Annex, underlining indicates new text and striking through indicates deleted text.

Annex

Commission Delegated Regulation (EU) 2017/590 of 28 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the reporting of transactions to competent authorities

…

ANNEX I

…

Table 2 **Details to be reported in transaction reports**

N	FIELD	CONTENT TO BE REPORTED	FORMAT AND STANDARDS TO BE USED FOR REPORTING
…			
Trader, algorithms, waivers and indicators			
…			
64	Commodity derivative indicator	Indication as to whether the transaction reduces risk in an objectively measurable way in accordance with ~~regulation 17 of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017~~ the non-financial entity exemption in MAR 10.2. Where the transaction is for a transmitted order that has met the conditions for transmission set out in Article 4, this field shall be populated by the receiving firm in the receiving firm's reports using the information received from the transmitting firm. This field is only applicable for commodity derivative transactions.	"true" - yes "false" - no
…			

MARKETS IN FINANCIAL INSTRUMENTS (NON-EQUITY TRANSPARENCY RULES) (AMENDMENT) INSTRUMENT 2025

Powers exercised

A. The Financial Conduct Authority ("the FCA") makes this instrument in the exercise of the powers and related provisions in or under:

(1) articles 8, 9, 10, 11 and 21 of Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012;

(2) the following sections of the Financial Services and Markets Act 2000 ("the Act"):

(a) section 137A (The FCA's general rules);
(b) section 137T (General supplementary powers);
(c) section 139A (Power of the FCA to give guidance); and
(d) section 300H (Rules relating to investment exchanges and data reporting service providers);

(3) regulation 11 of the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges, Clearing Houses and Central Securities Depositories) Regulations 2001 (SI 2001/995); and

(4) the other rule and guidance making powers listed in Schedule 4 (Powers exercised) to the General Provisions of the FCA's Handbook.

B. The rule-making powers listed above are specified for the purposes of section 138G(2) (Rule-making instruments) of the Act.

Commencement

C. Parts 1 and 3 of this instrument come into force on 5 February 2025.

D. Parts 2 and 4 of this instrument come into force on 1 December 2025 immediately after the relevant parts of the Markets in Financial Instruments (Non-Equity Transparency Rules) Instrument 2024 (FCA 2024/38) come into force.

Interpretation

E. In this instrument, any reference to any provision of assimilated direct legislation is a reference to it as it forms part of assimilated law.

Amendments to the Handbook

F. The Market Conduct sourcebook (MAR) is amended in accordance with the Annex to this instrument.

Notes

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(3) Paragraph (2) does not apply to a ~~*trading venue operator*~~ *systematic internaliser* when making market data available to the public free of charge.

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Asset classes	**Factor 1**	**Factor 2**	**Factor 3**						
…									
Bond Type	**Currency**	**~~Issuer~~ Rating**	**Issue Size**	…					
…									

…

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	Transparency investment firms (except systematic internalisers) and APAs			
1.7A	R	A *transparency investment firm* (except a *systematic internaliser*) and an *APA* are subject to the transparency requirements previously arising under *MiFIR*, including *MiFID RTS 2* and *MiFID RTS 3*, as it had effect immediately before 1 December 2024 and applied to them.		
1.7B	G	*MAR* TP 2 1.7AR provides for continuity of transparency requirements for *transparency investment firms* (except *systematic internalisers*) and *APAs*.		

Part 4: Comes into force on 1 December 2025

	Pre-1 December 2025 transactions	
1.8	G	In respect of a trade concluded before 1 December 2025, the *FCA* will treat anything done by a *transparency firm* for the purposes of complying with *MAR* TP 2 1.2R ~~and~~, *MAR* TP 2 1.5R or *MAR* TP 2 1.7AR as if it were done for the purposes of any equivalent new transparency provision in *MAR* 11 in force after 1 December 2025.
1.9	R	Where a *transparency firm* publishes ~~(via an *APA* or otherwise)~~ a trade report before 1 December 2025 in accordance with *MAR* TP 2 1.2R ~~or~~, *MAR* TP 2 1.5R or *MAR* TP 2 1.7AR and amends the report after 1 December 2025, it may make the new trade report required by *MAR* 11.4.5R(2)(b) either in accordance with *MAR* 11 Annex 2 or in accordance with *MAR* TP 2 1.2R ~~or~~, *MAR* TP 2 1.5R or *MAR* TP 2 1.7AR, as they previously applied.

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