

Getting started on MiFID II / MiFIR projects: Commodities and commodity derivatives trading

The table below sets out some of the key Level 1 and Level 2 MiFID II / MiFIR provisions as regards commodities and commodities derivatives trading. However, the table is not intended to provide the definitive position on all applicable measures and clients should contact their usual financial services contact at Norton Rose Fulbright LLP.

Topic and Level 1 provisions		Level 2 provisions	Level 3 provisions
<p>Definition financial instruments - Article 4(1)(15) of MiFID II</p> <p>Definition energy derivative contracts - C6 Article 4(1)(16) of MiFID II</p> <p>Definition derivatives - Article 4(1)(49) of MiFID II</p> <p>Definition commodity derivatives - Article 4(1)(50) of MiFID II</p> <p>Definition agricultural commodity derivatives - Article 4(1)(59) of MiFID II</p>	<p>Articles:</p> <ul style="list-style-type: none"> • 5 (definition of wholesale energy products that must be physically settled for the purposes of Section C(6) of Annex I of MiFID II); • 6 (definition of derivative contracts relating to oil and coal and wholesale energy products for the purposes of Section C(6) of Annex I of MiFID II); • 7 (definition of other derivative financial instruments for the purposes of Section C(7) of Annex I of MiFID II); • 8 (additional derivatives to those expressly referred to in Section C(10) OF Annex I of MiFID II); • 10(1) (other derivative contracts relating to currencies which are not a financial instrument); and • 10(2) (definition of a spot contract). <p>of Commission Delegated Regulation of 25 April 2016 as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive</p>	<p>ESMA Q&A on MiFID II and MiFIR commodity derivatives topics</p>	
<p>Exemption - Dealing on own account - Article 2(1)(d) of MiFID II</p>	N/A	<p>ESMA Q&A on MiFID II and MiFIR market structures topics</p>	
<p>Exemption - for operators with compliance obligations under the Emissions Trading Directive when dealing in emission - Article 2(1)(e) of MiFID II</p>	N/A		

allowances			
Exemption - Ancillary activity	Article 2(1)(j) of MiFID II	Articles 1 to 6 of Commission Delegated Regulation of 1 December 2016 laying down regulatory technical standards for the criteria to establish when an activity is considered to be ancillary to the main business	ESMA Q&A on MiFID II and MiFIR commodity derivatives topics
Temporary exemption for C6 energy derivative contracts from certain obligations under the European Market Infrastructure Regulation	Article 95 of MiFID II	ESMA shall publish on its website a list of those C6 energy derivative contracts that have been granted the temporary exemption set out in article 95 of MiFID II (not yet published).	
Obligation to trade on regulated markets, MTFs or OTFs	Article 28 of MiFIR	Articles 1 to 4 of Commission Delegated Regulation of 13 June 2016 laying down regulatory technical standards on the direct, substantial and foreseeable effect of derivative contracts within the Union and the prevention of the evasion of rules and obligations	
Trading obligation procedure	Article 32 of MiFIR	Articles 1 to 6 of Commission Delegated Regulation of 26 May 2016 laying down regulatory technical standards on criteria for determining whether derivatives subject to the clearing obligation should be subject to the trading obligation	
Position limits and position management controls	Articles 57 and 58 of MiFID II	Articles 1 to 22 of Commission Delegated Regulation of 1 December 2017 laying down regulatory technical standards for the application of position limits to commodity derivatives Article 83 of Commission Delegated Regulation of 25 April 2016 as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive Articles 1 to 4 of Commission Implementing Regulation of 20 June 2017 laying down implementing technical standards with regard to	ESMA Q&A on MiFID II and MiFIR commodity derivatives topics

		<p>the format of position reports by investment firms and market operators</p> <p>Articles 1 to 2 of Commission Implementing Regulation 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 pursuant to MiFID II</p>	
Coordination of national position management measures and position limits by ESMA	Articles 44 and 45 MiFIR	Article 22 of Commission Delegated Regulation of 18 May 2016 with regard to definitions, transparency portfolio compression and supervisory measures on product intervention and positions	