

Suppliment tal-Gazzetta tal-Gvern ta' Malta Nru. 20,787, 18 ta' Frar, 2022

Taqsimha B

L.N. 89 of 2022

**FINANCIAL MARKETS ACT
(CAP. 345)**

**INVESTMENT SERVICES ACT
(CAP. 370)**

**Position Limits and Position Management Controls in Commodity
Derivatives and Reporting (Amendment) Regulations, 2022**

IN EXERCISE of the powers conferred by article 49 of the Financial Markets Act and article 12 of the Investment Services Act, the Minister responsible for the regulation of Financial Services, acting on the advice of the Malta Financial Services Authority, has made the following regulations:

1. (1) The title of these regulations is the Position Limits and Position Management Controls in Commodity Derivatives and Reporting (Amendment) Regulations, 2022, and these regulations shall be read and construed as one with the Position Limits and Position Management Controls in Commodity Derivatives and Reporting Regulations, hereinafter referred to as "the principal regulations".

Citation and scope.

S.L. 345.19.
S.L. 370.36.

(2) The scope of these regulations is to transpose Article 1 (2), (10) and (11) of Directive (EU) 2021/338 of the European Parliament and of the Council of 16 February 2021 amending Directive 2014/65/EU as regards information requirements, product governance and position limits, and Directives 2013/36/EU and (EU) 2019/878 as regards their application to investment firms, to help the recovery from the COVID-19 crisis.

2. Sub-article (1) of regulation 2 of the principal regulations shall be amended as follows:

Amends regulation 2 of the principal regulations.

(a) immediately before the definition "Central competent authority", there shall be added the following new definition:

"agricultural commodity derivatives" means derivative contracts relating to products listed in:

(i) Article 1 of Regulation (EU) No 1308/2013 of the European Parliament and of the Council;

(ii) Parts I to XX and XXIV/1 of Annex I to

the Treaties of the European Union; and

(iii) Annex I to Regulation (EU) No 1379/2013 of the European Parliament and of the Council;"

(b) immediately after the definition "MIFIR", there shall be added the following new definition:

Cap. 370. "predominantly commercial group" means any group of which the main business is not the provision of investment services within the meaning of the First Schedule to the Investment Services Act, or the performance of any activity listed in Annex I to Directive 2013/36/EU as transposed in the First Schedule to the Banking Act, or acting as a market maker in relation to commodity derivatives;"

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Amends
regulation 3 of
the principal
regulations.

3. (1) Regulation 3 of the principal regulations shall be amended as follows:

(a) sub-regulation (1) of regulation 3 shall be substituted by the following:

" (1) The competent authority shall, in line with the calculation methodology determined by ESMA in the regulatory technical standards adopted in accordance with Article 57(3) of MiFID, set and apply limits on the size of a net position which a person can hold at all times in agricultural commodity derivatives and critical or significant commodity derivatives that are traded on trading venues, and in economically equivalent OTC contracts:

Provided that commodity derivatives shall be considered to be critical or significant where the sum of all net positions of end position holders constitutes the size of their open interest and is at a minimum of 300,000 lots on average over a one-year period.";

(b) in sub-regulation (2) of regulation 3, for the words "shall be set on the basis of all positions held by a person and those held on its behalf at an aggregate group level in order to:", there shall be substituted the words "shall be set based on all positions held by a person and those held on his or her behalf at an aggregate group level in order to:";

(c) sub-regulation (3) of regulation 3 shall be substituted

by the following:

" (3) The position limits referred to in sub-regulation (1) shall not apply to:

(a) positions held by, or on behalf of, a non-financial entity, and which are objectively measurable as reducing risks directly relating to the commercial activity of that non-financial entity;

(b) positions held by, or on behalf of, a financial entity that is part of a predominantly commercial group and is acting on behalf of a non-financial entity of the predominantly commercial group, where those positions are objectively measurable as reducing risks directly relating to the commercial activity of that non-financial entity;

(c) positions held by financial and non-financial counterparties for positions that are objectively measurable as resulting from transactions entered into to fulfil obligations to provide liquidity on a trading venue as referred to in point (c) of the fourth sub-paragraph of Article 2(4) of MiFID;

(d) any other securities as referred to in point (c) of point 1 to the Second Schedule of the Investment Services Act which relate to a commodity or an underlying asset as referred to in point 10 of the Second Schedule to the Investment Services Act.";

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(d) sub-regulation (5) of regulation 3 shall be substituted by the following:

" (5) The competent authority shall set position limits for critical or significant commodity derivatives and agricultural commodity derivatives that are traded on trading venues, based on the calculation methodology laid down in the regulatory technical standards adopted by the European Commission pursuant to Article 57(3) of MiFID. Such position limits shall include economically equivalent OTC contracts.";

(e) sub-regulation (6) of regulation 3 shall be substituted by the following:

" (6) The competent authority shall review the position limits referred to in sub-regulation (1) where there

is a significant change on the market, including a significant change in deliverable supply or open interest, based on its determination of deliverable supply and open interest, and reset those position limits in accordance with the calculation methodology laid down in the regulatory technical standards adopted by the European Commission pursuant to Article 57(3) of MiFID.";

(f) sub-regulation (9) of regulation 3 shall be substituted by the following:

"(9) Where:

(i) agricultural commodity derivatives based on the same underlying product and sharing the same characteristics are traded in significant volumes on trading venues in more than one jurisdiction; or

(ii) critical or significant commodity derivatives based on the same underlying commodity and sharing the same characteristics are traded on trading venues in more than one jurisdiction;

and the largest volume of trading takes place in Malta, the competent authority (as the central competent authority) shall set the single position limit to be applied on all trading in those derivatives. The competent authority shall consult the European regulatory authorities of other trading venues on which those agricultural commodity derivatives are traded in significant volumes or on which those critical or significant commodity derivatives are traded, on the single position limit to be applied and any revisions to that single position limit:

Provided that where the competent authority and the European regulatory authorities of the other trading venues do not agree, they shall state in writing the full and detailed reasons why they consider that the requirements prescribed in sub-regulations (1) to (3) are not met. ESMA will settle any dispute arising from a disagreement between competent authorities in accordance with its powers under Article 19 of Regulation (EU) No 1095/2010.";

(g) sub-regulation (10) of regulation 3 shall be substituted by the following:

" (10) Where:

(i) agricultural commodity derivatives based on the same underlying product and sharing the same characteristics are traded in significant volumes on trading venues in more than one jurisdiction; or

(ii) critical or significant commodity derivatives based on the same underlying commodity and sharing the same characteristics are traded on trading venues in more than one jurisdiction;

and the largest volume of trading does not take place in Malta, and the competent authority disagrees with the setting of the single position limit by a European regulatory authority which qualifies as a central competent authority, it shall state in writing the full and detailed reasons why it considers that the requirements laid down in sub-regulation (1) to (3) are not met:

Provided that ESMA shall settle any dispute arising from a disagreement between competent authorities in accordance with its powers under Article 19 of Regulation (EU) No 1095/2010.";

(h) sub-regulation (11) of regulation 3 shall be substituted by the following:

" (11) Where the MFSA is the competent authority of the trading venues in the case of:

(i) agricultural commodity derivatives that are based on the same underlying product and that share the same characteristics are traded in significant volumes; or

(ii) critical or significant commodity derivatives that are based on the same underlying commodity and that share the same characteristics;

are traded, it shall put in place cooperation agreements with the European regulatory authorities of the position holders in the derivatives mentioned in points (i) or (ii), which shall include the exchange of relevant data, in order to enable the monitoring and enforcement of the single position limit.";

(i) sub-regulation (12) of regulation 3 shall be substituted by the following:

"(12) Where the MFSA is the competent authority of the position holders in:

(i) agricultural commodity derivatives that are based on the same underlying product and that share the same characteristics are traded in significant volumes; or

(ii) critical or significant commodity derivatives that are based on the same underlying commodity and that share the same characteristics;

which are traded on a trading venue, it shall put in place cooperation agreements with the European regulatory authorities of such trading venues where the derivatives mentioned in points (i) or (ii) are being traded, which shall include the exchange of relevant data, in order to enable the monitoring and enforcement of the single position limit."; and

(j) sub-regulation (13) of regulation 3 shall be substituted by the following:

"(13) An investment firm or a market operator operating a trading venue which trades commodity derivatives shall apply position management controls, including powers for the trading venue to:

(a) monitor the open interest positions of persons;

(b) obtain information, including all relevant documentation, from persons about the size and purpose of a position or exposure entered into, information about beneficial or underlying owners, any concert arrangements, and any related assets or liabilities in the underlying market, including, where appropriate, positions held in commodity derivatives that are based on the same underlying commodity and that share the same characteristics on other trading venues and in economically equivalent OTC contracts through members and participants;

(c) request a person to terminate or reduce a

position, on a temporary or permanent basis, and to unilaterally take action to ensure the termination or reduction of the position where the person does not comply with such request; and

(d) require a person to provide, on a temporary basis, liquidity back into the market at an agreed price and volume with the express intent of mitigating the effects of a large or dominant position."

4. Regulation 4 of the principal regulations shall be amended as follows:

Amends
regulation 4 of
the principal
regulations.

(a) in sub-regulation 2 of regulation 4, for the words "exceed minimum thresholds.", there shall be substituted the words "exceed minimum thresholds:" and, immediately thereafter, there shall be added the following new proviso:

"Provided that position reporting as required in sub-regulation (1) shall not be applicable to any other securities as referred to in point (c) of point 1 to the Second Schedule of the Investment Services Act that relate to a commodity or an underlying asset as referred to in point 10 of the Second Schedule to the Investment Services Act."

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(b) sub-regulation 3 of regulation 4 shall be substituted by the following:

"(3) Maltese investment firms trading in commodity derivatives or emission allowances or derivatives thereof outside a trading venue shall provide, at least on a daily basis:

(a) the competent authority, in line with its role as central competent authority in terms of Regulation 3(9); or,

(b) if there is no central competent authority, the competent authority of the trading venue where the commodity derivatives or emission allowances or derivatives thereof are traded;

with a complete breakdown of their positions taken in economically equivalent OTC contracts and, when relevant, in commodity derivatives or emission allowances or derivatives thereof traded on a trading

venue, as well as of those of their clients and the respective clients of those clients until the end client is reached, in accordance with Article 26 of Regulation (EU) No 600/2014 and, where applicable, of Article 8 of Regulation (EU) No 1227/2011."
