

NOTICE 35/17

Date: 4 October 2017

Subject: **Entry into force of MiFID II on 3 January 2018. Various aspects affecting the commodity derivatives trading**

Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments (MiFID II or “the Directive”) is entering into force on 3 January 2018 and it affects those entities that trade commodity derivatives, such as electricity.

This notice summarizes several MiFID II aspects that affect the said entities:

1. Possibility to request the Directive exemption.

Article 2 of MiFID II states (Exemptions) that the Directive shall not apply to persons dealing on own account in commodity derivatives provided that:

- For each of those cases individually and on an aggregate basis this is an ancillary activity to their main business, when considered on a group basis, and that main business is not the provision of investment services.
- Those persons notify annually the relevant competent authority that they make use of this exemption and upon request report to the competent authority the basis on which they consider that their activity is ancillary to their main business.

After MiFID II, Commission Delegated Regulation (EU) 2017/592 of 1 December 2016 was published detailing the auto-assessment an entity must perform so as to confirm that its commodity derivatives activity trading is an activity ancillary, and then it is entitled to request to be Directive exempt. The said Delegated Regulation states that the assessment should be performed in the form of two tests:

1. The size of the person's non-hedging trading activity against the overall trading activity in the Union is not above a specific threshold, and
2. The non-hedging trading activity in derivatives is an activity ancillary with regard to the main activity.

If both conditions are met, the exemption request can be made to the national competent authority. In Spain, instructions to make this request are expected to be released by the CNMV, being able to complete formalities on its website ¹.

¹ MEFF has prepared a summary of auto-assessment tests. Summary aims to be a helpful tool for a first review of Delegated Regulation (EU) 2017/592, and can be requested to meffmarketservices@grupobme.es. It is provided with an informative purpose and does not intent to be a legal advice.

2. Position limits in commodity derivatives

Article 57 of MiFID II forces competent authorities to establish and apply position limits on the size of a net position which a person can hold at all times in commodity derivatives (traded on trading venues and/or economically equivalent OTC contracts).

In the case of MEFFPower, CNMV shall establish those position limits.

3. Possibility of Position Limits exemption request

Article 57 of MiFID II states that Position Limits (previously mentioned) shall not apply to hedging positions (that reduce risks relating to the commercial activity) of non-financial entities.

The Commission Delegated Regulation (EU) 2017/591 of 1 December 2016 details the position limits exemption request. In the case of MEFFPower, the exemption request shall be made to the national competent authority. In Spain, instructions to make this request are expected to be released by the CNMV, being able to complete formalities on its website.

The Position Limits exemption request is independent from the Directive exemption detailed in section 1.

4. Information of MEFF of positions to the general public and to the authorities

Article 58 of MiFID II states that a trading venue which trades commodity derivatives shall:

- Make public a weekly report with the aggregate positions held by the different categories of persons for the different commodity derivatives traded on their trading venue. This report shall specify, among others, the number of long and short positions by such categories and the number of persons holding a position in each category.
- Provide the competent authorities with a complete breakdown of the positions held by all persons, including the members and participants, on a daily basis.

Article 58.3 states that all Members and participants of the trading venue shall report the necessary information for this purpose to the market operator operating the trading venue. In order to ensure compliance with the previous, MEFF will request its Members to inform, on at least a daily basis, data about its own positions, as well as those of their clients and of clients of their clients, up to last client.

To facilitate the task to Power Segment Members, MEFF had cooperated with EFET (European Federation of Energy Traders) and has accepted to use the XML scheme suggested, that will be also used in other Commodity Derivatives exchanges.

Because of this, MEFF has reached an agreement with BME Clearing so the Central Counterparty Entity will be the one in charge of offering the possibility of creating said daily reports for every Member and of sending them so Members can modify and/or validate them before MEFF, as a trading venue, makes the daily and weekly reports with the information provided by BME Clearing.

All MEFF Members are forced to fulfill those daily reports, even those Members that have requested the Directive exemption or the Position Limits exemption.

For those Members that have requested the Position Limits exemption, CNMV will take into account, regarding said limits, uniquely the non-hedging position, whereas it will take into account both positions regarding the Position Limit for those members that have not requested the said exemption.

MEFF will shortly release a guide with technical details.

5. Orders Record

MiFID II establishes the obligation to maintain an orders' record for regulated trading venues. There are new compulsory fields in orders and Trades Agreed Directly (Trades affecting MEFFPower).

Among MiFID II new fields, there are three fields that must be informed by Members using short codes (method implemented in most European exchanges): Client, Investment decision within the firm and Execution within the firm.

Power Segment Members must send the files related to the said fields information. These files can be sent daily or just once, if no changes are expected on said fields. Files must be sent via SFTP according to instructions detailed in the Order Record Keeping handbook available at http://www.meff.es/docs/docsSubidos/MiFID_eng/Order_Record_Keeping_Hand_Book.pdf

Members will be able to provide the short codes to brokers so as to complete new fields in trades agreed directly.

6. Trades Report

With regard to MiFID II demand about reporting every financial derivative trade (Transaction Reporting TR), MEFF reminds Members that the said rule is also indirectly applicable to non-financial entities. It is the exchange (in this case MEFF) the one forced to report on behalf of non-financial Members of the Power Segment, so members shall carry out necessary actions to allow the exchange to comply with said reporting.

Regarding this reporting, the Transaction Reporting STR v1.2 handbook can be reviewed at http://www.meff.es/docs/docsSubidos/MiFID_eng/Handbook_TRS_BME_1_2.pdf Bearing in mind certain singularities for non-financial Members of the Power Segment:

- Short code CT (Client): since all trading activity will be on own account, it will be informed as 0, and it will not be necessary to send CT record. Because of this, TS record (Transmission Chains) will not be required since there will not be clients orders transmission.
- Bearing in mind the Risk Mitigating Indicator that affects the Power Segment Members (field 64 of TR), this will be able to be reported:
 - a. In every trade order: every trade will have a space to indicate if it enlarges or reduces the risk.
 - b. Via DR record: as described in mentioned handbook.

7. Questions

Should you have any query about the above please contact meffmarketservices@grouponbme.es or phone +34.91.709.5300.