



Level 3 Q&A: Commodity Derivatives Position Reporting (MiFID II, Article 58)

No.	Issue	Question	Answer
1. Commodity Derivatives Position Reporting (MiFID II, Article 58)			
1.1	Meaning of “end client”	As there is no definition of “end client” in MiFID II/MiFIR, should references to “end client” in Article 58 MiFID II be interpreted in light of the Article 4(1)(9) MiFID II definition of “client”?	<p>Yes. In the absence of a definition of the term “end client” in MiFID II/MiFIR, any reference to “end client” in Article 58 MiFID II should be interpreted in accordance with the definition of “client” set out in Article 4(1)(9) of MiFID II. That definition states that <i>“client” means any natural or legal person to whom an investment firm provides investment or ancillary services</i>. Accordingly:</p> <ul style="list-style-type: none"> • for a person to be a “client” it must receive investment or ancillary services from an investment firm; • if that person (the “client”) is not itself an investment firm, then that client must also be the “end client” as it will not be providing investment or ancillary services, and therefore cannot have any clients of its own; and • if the client is an investment firm, but does not provide investment or ancillary services to another person, then the client will also be the “end client”.
1.2	Reporting of positions of “clients” and “clients of those clients”	Where Article 58 MiFID II imposes a requirement on an entity to include the positions of its <i>“clients and the clients of those clients, until the end client is reached”</i> , should the entity's report include its own positions, those of any entity to whom it provides investment or ancillary services (“Client X”), those of any entity to whom Client X provides investment or ancillary services, and so on down the chain?	<p>Yes. Reports made under Article 58(2) MiFID II should include:</p> <ul style="list-style-type: none"> • an investment firm's own positions; • those of any client entity to whom it provides investment or ancillary services (“Client X”); • those of any entity to whom Client X provides investment or ancillary services; and • so on down the chain to the “end client”.
1.3	Reporting of positions of “clients”	Will there always be a “client” in respect of a position taken in a commodity derivative, emission allowance or derivative thereof that is traded on a trading venue or in an economically equivalent OTC contract (“EEOTC”)?	Not every position taken in a commodity derivative, emission allowance or derivative thereof that is traded on a trading venue or in an EEOTC contract will involve a client. For example, an investment firm will not have a “client” where it is dealing on its own account.

		<p>As an example, in the case where an investment firm ("Firm A") is dealing on its own account and enters into an EEOC contract with another investment firm ("Firm B") without providing investment or ancillary services to Firm B, should Firm A's position report only include its own positions (and not those of Firm B, nor those of any client that Firm B may have)?</p>	<p>Where an investment firm enters into an EEOC with another investment firm, neither firm may be providing investment or ancillary services to the other. Indeed, if both investment firms are dealing on their own account, neither investment firm has a "client".</p> <p>An investment firm is not required to report positions of a trading counterparty (where such counterparty is not that firm's client), or those of any client that the trading counterparty may have. Investment firms should only report their own positions, as well as those of <u>their</u> clients and the clients of those clients, until the end client is reached.</p>
1.4	Legal Issues relating to the reporting of client positions	<p>How should a firm fulfil its obligations under Article 58 MiFID II to report positions of its "<i>clients and the clients of those clients</i>", when to do so would result in that firm being in breach of applicable non-EU laws and regulations, such as data protection and banking secrecy requirements?</p>	<p>It is recognised that certain non-EU laws and regulations regarding data protection and banking secrecy may restrict or prevent reporting entities from complying with their obligations under Article 58 MiFID II. Moreover, we understand that in some circumstances such breaches may constitute criminal offences.</p> <p>The reporting obligation under Article 58 MiFID II does not require any entity to breach any other applicable law, or commit a criminal offence. Any firm submitting a report in respect of a position of any "client", up to an "end client", shall complete such report to the fullest extent possible allowed under the applicable laws and regulations of the relevant "client" or "end client". It is expected that a firm would be able to complete every field of a report for the position of an EU client, provided that the necessary information has been provided by the EU client in a timely manner.</p>
1.5	Duplicative Reporting	<p>Article 58(2) MiFID II requires an investment firm to report its trading venue positions (as well as its EEOC positions) to the relevant NCA. The investment firm then reports the same trading venue positions to the trading venue under Article 58(3) MiFID II. In turn, the trading venue reports those same trading venue positions to the relevant NCA under Article 58(1). Given the level of duplicative reporting, will the reporting obligations be streamlined?</p>	<p>In line with the Final Report (ESMA/2015/1858), investment firms may meet their obligations for reporting venue traded derivatives under Article 58(2) by delegating part of their reporting to the entities that are obliged to report the same positions in instruments to the same NCA, i.e. the entity operating the relevant trading venue.</p> <p>Accordingly, in order to maximise consistency between the reporting obligation provisions:</p>



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			<ul style="list-style-type: none">• a firm may comply with the obligation to report positions held on trading venues under Article 58(2) MiFID II by delegating the reporting obligation to the entity operating the relevant trading venue;• a firm may comply with both the obligation to report positions held on trading venues and the obligation to report EEOC positions under Article 58(2) MiFID II by delegating the reporting obligations to a third-party provider; and• delegation is also permitted in respect of the Article 58(3) MiFID II reporting obligation. <p>To further maximise consistency, any market participant reporting under Article 58(3) to a trading venue shall be able to report by submitting (or have submitted on their behalf) a report in the same format as provided to be used under Article 58(2).</p>
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