

Chapter 10

Commodity derivative position limits and controls, and position reporting

10.1 Application

Introduction

10.1.1

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- (1) The purpose of this chapter is to implement articles 57 and 58 of *MiFID* by setting out the necessary directions, *rules* and *guidance*.
- (2) In particular, this chapter sets out the *FCA's* requirements 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;
 - (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 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 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:
 - (a) Part 3 of the *MiFI Regulations* ('Position limits and position management controls in commodity derivatives'); and
 - (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, 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

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- (1) The scope of this chapter is as follows: In respect of position limit requirements in ■ MAR 10.2, a *commodity derivative* position limit established by 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 *persons* operating a *trading venue* which trades *commodity derivatives* in respect of which the *FCA* is the *competent authority*; and
 - (b) in the case of a *UK branch* of a *third country investment firm* operating an *MTF* or *OTF*, ■ MAR 10.3 applies in the same way as it does to a *UK firm* operating a *multilateral trading facility* or an *OTF*.
- (3) In respect of position reporting requirements:
 - (a) the position reporting requirements in ■ MAR 10.4 apply to:
 - (i) a *regulated market*; and
 - (ii) a *UK firm* or a *UK branch* of a *third country investment firm* operating a *multilateral trading facility* or an *OTF*,
when operating a *trading venue* which trades *commodity derivatives* or *emission allowances*; and
 - (b) the position reporting requirements in ■ MAR 10.4 apply to an *investment firm* regardless of its location at the time of entering into the position and the location of execution.

Structure

10.1.3

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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

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- (1) The following provisions of the *MiFI Regulations* regulate the establishment, application and resetting of position limits:
 - (a) Regulation 16(1) imposes an obligation on 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;
 - (c) Regulation 16(4) imposes an obligation on the *FCA* to publish the position limits it establishes in a manner which the *FCA* considers appropriate;
 - (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;
 - (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*;
 - (f) Regulation 19(2) imposes an obligation on the *FCA* to review position limits it has established in the presence of certain factors;
 - (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;
 - (h) [deleted]
 - (i) [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;
 - (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;

(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

(m) [deleted]

(n) Regulation 27 empowers the *FCA* to require a *person* to provide information on, or concerning, a position the *person* holds, or trades the *person* has undertaken, or intends to undertake, in a contract to which a position limit relates.

(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*.

(a) *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*.

[Note: article 57 of *MiFID*]

Application of position limits

10.2.2

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(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.

[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]

Non-financial entity exemption

10.2.3

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- (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.
- (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*]

Non-financial entity exemption application

10.2.4

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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).

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[deleted]

10.3 Position management controls

Application

10.3.1 **G** The application of this section is set out in the following table:

Type of firm	Applicable provisions
a UK market operator operating a trading venue	MAR 10.3.2G and MAR 10.3.4G
a 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 10.3.3R to MAR 10.3.5G

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 MiFID Regulations.

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

Position management controls applicable to UK firms and UK branches of third country investment firms operating an MTF or OTF

10.3.3 **R** This rule applies to a 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.

A firm must apply position management controls which enable an MTF or OTF at least to:

- monitor the open interest positions of persons;
- access information, including all relevant documentation, from persons about:
 - the size and purpose of a position or exposure entered into;
 - any beneficial or underlying owners;
 - any concert arrangements; and
 - any related assets or liabilities in the underlying market;

require a *person* to terminate or reduce a position on a temporary or permanent basis and unilaterally to take appropriate action to ensure the termination or reduction if the *person* does not comply; and

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 and dominant position.

The position management controls in paragraph (2) must take account of the nature and composition of market participants and of the use they make of the contracts admitted to trading and must:

be transparent;

be non-discriminatory; and

specify how the controls apply to *persons*.

A *firm* must inform the *FCA* of the details of the position management controls in relation to each *MTF* or *OTF* it operates which trades *commodity derivatives*.

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

Supervision of position management controls

10.3.4

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An operator of a *trading venue* referred to in ■ MAR 10.3.1G 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.

Position management controls: Procedure for informing the FCA

10.3.5

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A *firm* must comply with the obligation in ■ MAR 10.3.3R(4) by completing the form available at www.fca.org.uk.

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
<i>Regulated market</i>	MAR 10.4.2G
<i>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</i>	MAR 10.4.3R to MAR 10.4.6G
<i>MiFID investment firm</i>	MAR 10.4.7D to MAR 10.4.9D and MAR 10.4.11G
<i>UK branch of a third country investment firm when not operating a multilateral trading facility or an OTF</i>	MAR 10.4.7D to MAR 10.4.9D and MAR 10.4.11G
<i>Member, participant or a client of a UK trading venue</i>	MAR 10.4.7D

Position reporting by UK regulated markets

10.4.2 **G** A regulated market which trades commodity derivatives or emission allowances must provide position reports in accordance with paragraph 7BB of the Schedule to the *Recognition Requirements Regulations*, as inserted by the *MiFI Regulations*.

[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**

- (1) This rule applies to a 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.
- (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*, specifying:
 - (a) the number of long and short positions held by such categories;
 - (b) changes in those positions since the previous report;

- (c) the percentage of the total open interest represented by each category; and
 - (d) the number of *persons* holding a position in each category, as specified in ■ MAR 10.4.4R.
- (3) The *firm* must provide the *FCA* with a complete breakdown of the positions held by all *persons*, including the members or participants and *clients*, as well as those of their clients until the end client is reached, on the *trading venue* on a daily basis.
- (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; 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]

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

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A *firm* must classify *persons* holding positions in *commodity derivatives* or *emission allowances* according to the nature of their main business, taking account of any applicable authorisation or registration, as:

- (1) *investment firms* or *credit institutions*; or
- (2) investment funds, either as a *UCITS*, or an *AIF* or an *AIFM*; or
- (3) other financial institutions, including:
 - (a) insurance undertakings and reinsurance undertakings as defined in the *Solvency II Directive*; and
 - (b) institutions for occupational retirement provision as defined in Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement; or
- (4) commercial undertakings; or
- (5) in the case of *emission allowances*, operators with compliance obligations under the *Emission Allowance Trading Directive* or the *trading scheme order 2020*.

[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

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- (1) This direction applies to:
 - (a) a *UK firm operating a multilateral trading facility* or an *OTF*; and

- (b) a UK branch of a third country investment firm operating a multilateral trading facility or an OTF.
 - (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*) the weekly report referred to in ■ MAR 10.4.3R(2), by using the form set out in Annex I of *MiFID ITS 4*, 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 the form set out in Annex II of *MiFID ITS 4* available at <https://www.fca.org.uk/markets/mifid-ii/commodity-derivatives>; and
 - (ii) in each case, the report must be provided to the FCA by 21:00 GMT 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 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
- (1) This direction applies to a member, participant or a *client* of a *trading venue*.
 - (2) A *person* in (1) must report to the relevant operator of a *trading venue* the details of their own positions held through contracts traded on that venue, at least on a daily basis, as well as those of their clients and the clients of those clients, until the end client is reached.
 - (3) [deleted]

[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
- (1) This direction applies to:
 - (a) a *MiFID investment firm*; and
 - (b) a UK branch of a *third country investment firm*.
 - (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*;
 - (b) *economically equivalent OTC contracts*; and

(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 the following *business day*, using the form set out in Annex II of *MiFID ITS 4* available at <https://www.fca.org.uk/markets/mifid-ii/commodity-derivatives>.

(4) The obligation in (2) does not apply where there is a *central competent authority* for the *commodity derivative* other than the *FCA*.

[Note: 58(2) of *MiFID*, and *MiFID ITS 4* on position reporting]

10.4.9 **D** [deleted]

EEA MiFID investment firms who are members, participants or clients of UK trading venues: trading venue participant reporting and OTC reporting to the FCA

10.4.10 **D** [deleted]

10.4.11 **G**

(1) This *guidance* applies to *persons* subject to ■ MAR 10.4.8D(2).

(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 10.4.8 D(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 with its own reporting entity identification. It should be the applicant for, and should complete and sign, the *FCA MDP onboarding application form*.

(3) ■ MAR 10.4.11.G(2) applies to a *trading venue* subject to ■ MAR 10.4.

(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 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:
- (1) require a *person* to provide information including all relevant documentation, on, or concerning:
 - (a) a position the *person* holds in a contract to which a position limit relates; and
 - (b) trades the *person* has undertaken, or intends to undertake, in a contract to which a position limit relates; and
 - (2) require an operator of a *trading venue* to provide information including all relevant documentation on, or concerning, trades a *person* has undertaken, or intends to undertake in a contract to which a position limit relates.

[Note: article 69(2)(j) of *MiFID*]

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, limit the ability of any *person* to enter into a contract for a *commodity derivative*, 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 the *FCA* in accordance with article 57 of *MiFID* to which the contract relates; and
 - (2) Paragraph 5 of Schedule 1 provides that the *FCA* must maintain arrangements designed to enable it to determine whether *persons* on whom the *FCA* imposes position limit requirements are complying with those requirements, and also maintain arrangements for enforcing the position limits requirements on such *persons*.

[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*:
- (1) Paragraph 8 of Schedule 1 provides that a *person* must provide the *FCA* with information in respect of its compliance or non-compliance with position limit requirements, as the *FCA* may direct; and
 - (2) Paragraph 5 of Schedule 1 provides that the *FCA* must maintain arrangements designed to enable it to determine whether *persons* on whom the *FCA* imposes position limit requirements are complying with those requirements, and also maintain arrangements for enforcing the position limits requirements on such *persons*.
- [Note: article 69(2)(j) of *MiFID*]

Breaches of MAR 10 by unauthorised persons

- 10.5.4 **D**
- (1) An *unauthorised person* to which this chapter applies must notify the *FCA* of:
 - (a) a breach of a direction in this chapter;
 - (b) a breach of a directly applicable provision imposed by *MiFIR* or any *onshored regulation* adopted under *MiFID* or *MiFIR*; and
 - (c) a breach of any requirement imposed by or under the *MiFI Regulations* which relates to this chapter.
 - (2) Notifications under (1) must be made immediately if the *person* becomes aware, or has information which reasonably suggests, that any of the breaches referred to in (1) have occurred, may have occurred or may occur in the foreseeable future.

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.

Breaches of MAR 10 by authorised persons

- 10.5.6 **G** *Firms* should refer to ■ SUP 15.3 (General notification requirements) generally, and in particular ■ SUP 15.3.11R, in respect of the following:
- (1) a breach of a *rule* or *direction* in this chapter;
 - (2) a breach of a directly applicable provision imposed by *MiFIR* or any *onshored regulation* adopted under *MiFID* or *MiFIR*; and
 - (3) a breach of any requirement imposed by or under the *MiFI Regulations* which relates to this chapter.

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*.

Decision and appeal procedures

- 10.5.8 **G** The power of the *FCA* referred to in ■ MAR 10.5.2G is exercisable subject to the decision-making procedures in ■ DEPP 2 Annex 2G (Supervisory notices) (and other provisions in *DEPP*, as appropriate).

**Application form for a non-financial entity for an exemption from
compliance with position limits**

[Editor's Note: To follow]

