

Submission Date

23/09/2022

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Additional Information

Level 1 Regulation

Markets in Financial Instruments Directive II (MiFID II) Directive 2014/65/EU- Secondary Markets

Topic

Position reporting

Subject Matter

Position reporting

Question

Where an NFE trades only, or partly, for hedging purposes, can every transaction be reported as being for speculative purposes? Can on-venue liquidity provision be also reported as being for speculative purposes?

23-09-2022

Original language

[ESMA 70-872942901-36 Commodity derivatives Q&A, Q&A 4.11]

No. NFEs and financial entities should ensure that their position reports accurately describe their position. This is necessary to ensure the reliability and accuracy of the position reports submitted to NCAs and the published weekly position reports. Accordingly, NFEs are expected to correctly flag positions as hedging (or speculative) based on the conditions established in Article 7 of RTS 21a. In particular, the reports should accurately describe whether the position is risk reducing in relation to the NFE's commercial activities. This is the case even if the NFE does not apply for a hedging exemption under Article 8(1) and (2) of RTS 21a (in accordance with Q&A 1520) because it does not expect its aggregated positions resulting from hedging and non-hedging activities to exceed the limit set by the relevant NCA for that commodity derivative contract.

The same applies to the reporting of positions held by NFEs and financial entities that result from on-venue mandatory liquidity provision and the reporting of positions held by a financial entity to reduce risks directly relating to the commercial activity of the non-financial entity in the same predominantly commercial group, even if those entities do not apply for a position limit exemption in accordance with Articles 9 or 8(3) and (4) of RTS 21a respectively.