



European Securities and
Markets Authority

Guidelines

Guidelines on the application of C6 and C7 of Annex 1 of MiFID



Application of C6 of Annex 1 of MiFID I

1. ESMA considers that definition C6 of Annex 1 of MiFID applies in the following way:
 - a. C6 has a broad application, applying to all commodity derivative contracts, including forwards, providing that:
 - i. they can or must be physically settled; and
 - ii. they are traded on a regulated market and/or an MTF.
 - b. “*Physically settled*” incorporates a broad range of delivery methods and includes:
 - i. physical delivery of the relevant commodities themselves;
 - ii. delivery of a document giving rights of an ownership nature to the relevant commodities or the relevant quantity of the commodities concerned (such as a bill of lading or a warehouse warrant); or
 - iii. another method of bringing about the transfer of rights of an ownership nature in relation to the relevant quantity of commodities without physically delivering them (including notification, scheduling or nomination to the operator of an energy supply network) that entitles the recipient to the relevant quantity of the commodities.

Application of C7 of Annex 1 of MiFID I

2. ESMA considers that definition C7 of Annex 1 applies in the following way:
 - a. C7 forms a category that is distinct from C6 and applies to commodity derivative contracts that can be physically settled which are not traded on a regulated market or an MTF providing that the commodity derivative contract:
 - i. is not a spot contract as defined under Article 38(2) of Regulation 1287/2006/EC;
 - ii. is not for the commercial purposes described under Article 38(4) of Regulation 1287/2006/EC; and
 - iii. meets one of the three criteria under Article 38(1)(a) and also the separate criteria under Article 38(1)(b) and 38(1)(c) of Regulation 1287/2006/EC.
 - b. “*Physically settled*” incorporates a broad range of delivery methods and includes:
 - i. physical delivery of the relevant commodities themselves;

- ii. delivery of a document giving rights of an ownership nature to the relevant commodities or the relevant quantity of the commodities concerned (such as a bill of lading or a warehouse warrant); or,
 - iii. another method of bringing about the transfer of rights of an ownership nature in relation to the relevant quantity of commodities without physically delivering them (including notification, scheduling or nomination to the operator of an energy supply network) that entitles the recipient to the relevant quantity of the commodities.
3. Physically settled commodity derivatives which do not fall within the definition of C6, i.e. are not traded on a Regulated Market or an MTF, may fall within the definition of C7 and the definitions of C6 and C7 form two distinct categories as C7 applies to commodity derivatives *“that can be physically settled not otherwise mentioned in C6”*.
4. The other characteristics of commodity derivatives under C7 - *“not being for commercial purposes, which have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are cleared and settled through recognised clearing houses or are subject to regular margin calls”* - are further defined under Article 38 of Regulation 1287/2006/EC.
5. ESMA notes that the conditions defined in Article 38 of Regulation 1287/2006/EC, are to be applied cumulatively.