Financial Conduct Authority

MIFID 2
Commodities and the 80:20 Rule

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Definitions of commodity derivatives

- Important to define “physically settled” as relevant to differentiation between REMIT and MIFID 2

- Gas and electricity are clearly defined, oil is more problematic due to different grades. Subject of consultation process.

- Discussion on what makes “must be” a characteristic of physically settled transactions

Ancillary activity

- Subject of much heated discussion
- Interpretation of political intent translated to real world numbers
- Inventive approaches by ESMA, including analysis of overall activities in both entity and market dimensions
- Consensus starting to form on use of capital as a measure

Position limits – key issues

- How are the factors to be adjusted?

- What is an OTC equivalent contract?
- ...and having defined it, how do you recognise it and capture it?

- Netting of positions in the same contract, and with OTC contracts?

- Exemptions for risk-reducing commercial activity?

Position reporting– key issues

- Article 58 states the who and the what. The "how" is more problematic
- Regime applies to Commodity Derivatives plus Emissions Allowances, and derivatives on EAs
- Recognises Economically Equivalent OTC Contracts, but in an awkward manner, and requires different reporting routes

Position transparency – key issues

- Frequency of reporting by investment firms to trading venues and NCAs, and by trading venues to NCAs…"at least on a daily basis"

- Trading venues publish "Commitment of Traders" reports weekly, with aggregated data on large volume contracts

- Thresholds set in separate rules and aim to avoid ability to identify market participants individually