# MiFID II Position Reporting – Position Holder Categorisation

| **Holder is subject to EU Regulation/ Directive:**<br>**(Non-EU parties should be viewed as inside the EU for the tests below except for the 2003/87 test).** | **Regulation covers** | **Example** | **Holder is in Category** | **ICE Cat No.** |
|---|---|---|---|---|
| Directive 2014/65 “MiFID II” | Investment firms | Brokers<br>Proprietary traders in commodity derivatives | “Investment firms or credit institutions” | 0 |
| Directive 2013/36 ”CRD” | Credit institutions | Banks | “Investment firms or credit institutions” | 0 |
| Directive 2009/65<br>Directive 2011/61 | UCITS<br>AIFM (excludes family offices). | Investment funds<br>Unit trusts ETFs<br>Hedge funds | “Investment funds” | 1 |
| Directive 1973/239 or<br>Directive 2002/83 or<br>Directive 2005/68<br>Directive 2003/41<br>Regulation 2012/648<br>Regulation 2014/909 | Insurance<br>Assurance<br>Re-insurance<br>Pension fund<br>CCP<br>Central Securities Depository | | “Other financial institution” | 2 |
| Not subject to any of the above | | Unregulated traders<br>Commercial enterprises<br>Family Office<br>University Endowment funds | “Commercial undertakings” | 3 |
| Endex: Subject to Directive 2003/87<br><br>IFEU: Subject to Directive 2003/97 **OR** subject to UK Emission Allowance Trading Scheme SI 2020/1265. | Terrestrial $CO_2$ emitters<br><br>Terrestrial and Aviation $CO_2$ emitters | Power companies | “Operators with obligations under Directive 2003/87/EC” | 4 |

# MiFID II Position Reporting – Position Holder Categorisation

"Other financial institution" is not a miscellaneous category, only entities under the above named regulations should use this category. The Exchange expects entities in this category to have one of the following words in their Gleif translated legal name: 'Pension', 'Retirement', 'Insurance', 'Assurance', 'Reinsurance'.

A firm whose main business is the proprietary trading of financial instruments including commodity derivatives and emission allowance derivatives is an Investment Firm.

A fund that does not seek to raise outside capital for investment is NOT an Investment Fund, e.g.

Family Offices
University Endowment Funds
Employee Saving Schemes are all examples of bodies that are not Investment Funds and should be categorised as "Commercial Undertakings"

"Commercial undertakings" is for general position holders that do not easily fit into another category. Natural persons should be categorised as a "Commercial Undertaking" unless they are personally authorised as an investment firm and have an LEI.

An entity that holds positions to manage risk in an affiliate entity should use the category of the affiliate for whom it is managing risk.

A position holder submitting a category of 4 will be treated as a category 3 holder for non-emission allowance derivatives.

"Credit Institutions" does not include, central banks, government debt management offices, Post office banks, savings societies, supra-national financial institutions or any body with less than EUR 5 million in capital. Any of the above should be categorised as "Commercial Undertakings".

# MiFID II Position Reporting – Risk Reducing Positions

Risk reducing positions can **only** be held by “Commercial undertakings” or “Operators with obligations under Directive 2003/87”

I.e. **Position holders in the three financial categories cannot hold risk reducing positions:**

- Investment Firms and Credit Institutions
- Investment Funds
- Other Financial Institutions

ICE’s systems reject risk reducing positions submitted for position holders in these categories.

Where a commercial undertaking or operator under the emission allowance directives and regulations wishes to indicate that a position is risk reducing they need to meet the standards set by Regulation 2017/591 Article 7:

“it reduces the risks arising from the potential change in the value of assets, services, inputs, products, commodities or liabilities that the non-financial entity or its group owns, produces, manufactures, processes, provides, purchases, merchandises, leases, sells, or incurs or reasonably anticipates owning, producing, manufacturing, processing, providing, purchasing, merchandising, leasing, selling or incurring in the normal course of its business”

Describes the following in its internal policies:

(i) the types of commodity derivative contracts included in the portfolios used to reduce risks directly relating to commercial activity and their eligibility criteria;

(ii) the link between the portfolio and the risks that the portfolio is mitigating;

(iii) the measures adopted to ensure that the positions concerning those contracts serve no other purpose than covering risks directly related to the commercial activities of the non-financial entity, and that any position serving a different purpose can be clearly identified;

and is able to provide a sufficiently disaggregated view of the portfolios in terms of class of commodity derivative, underlying commodity, time horizon and any other relevant factors.

Positions that have IFRS “Hedge Accounting” treatment will also qualify, but this is not common.

# MiFID II Position Reporting – Ancillary Activities

A commercial enterprise trading in commodity derivative and emission allowance derivatives will not be deemed a proprietary trading investment firm if its derivative activities are below the following threshold:

$$\frac{\left[\begin{array}{l}\text{Net average notional x 0.15} \quad + \\ \text{Gross average notional x 0.03}\end{array}\right]}{\left[\begin{array}{l}\text{Total Assets -} \\ \text{Liabilities falling due in less than 1 year}\end{array}\right]} < 10\%$$

The calculation should be performed over the previous three calendar years on a group wide consolidated basis.
Intra-group derivative trades and trades that demonstrably reduce commercial risks should be excluded.
Derivatives traded by group entities who are authorised investment firms or banks should be excluded
Derivatives traded to satisfy obligations to provide liquidity on a trading venue should be excluded