

Nathaniel Lalone Talks With Risk.net on MiFID II Challenges for Futures Commission Merchants

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Financial Services partner Nathaniel Lalone spoke with *Risk.net* as part of their latest coverage on the revised Markets in Financial Instruments Directive (MiFID II), which goes into effect on January 3, 2018. The first article focused on the struggle of European regulators to identify breaches of commodity derivatives position limits by US futures commission merchants (FCMs). While third-country firms with positions in European markets are required to submit daily position reports of commodity derivatives to the national regulator and trading venue where they are traded, they are not required to report their own or their clients' individual positions. With many FCMs operating omnibus accounts, this could lead to problems for EU regulators seeking to enforce limits or make sense of position reports.

"The position reports have to be reported on a net basis," said Nate. "But if [it's] an omnibus account, you're going to have netted positions across dozens—if not hundreds or thousands—of different end clients, which will not give anywhere close to an accurate reflection of what an individual client's actual underlying positions are." In effect, the position reports from non-EU clearing firms are "going to be effectively meaningless information." ("MiFID II Position Limits Regime Faces Non-EU Reporting Woes," December 1, 2017)

In a follow-up article, it is noted that US FCMs may face additional challenges when local exemptions to EU venues are eliminated in favor of requiring EU affiliates with full MiFID II licenses. Nate stated, "We have weeks between now and January 3. Market infrastructures and forms of trading access don't reinvent themselves overnight. For people adversely affected by this, it is hard to see there is enough time for them to solve the problems between now and January 3." Regarding the European Securities and Markets Authority's (ESMA) decision to not accept regulated firms from jurisdictions considered to be equivalent, he added, "ESMA is laying down a marker, saying equivalence won't solve the problem either. The conflict between ESMA's recent guidance and national implementation is challenging enough, but this could effectively close the door on potential solutions other than

restructuring the trade flows completely." ("EU Shuts Door on Foreign Electronic Access Providers," December 14, 2017)

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